INDEX.

ACTIONS.

1. *Criminal prosecution and administrative inquiry differentiated.*
There is a distinction between a criminal prosecution and an administrative inquiry by an Executive Department or subordinate officers thereof. (*Zakonaite* v. *Wolf*, 226 U. S. 272.) *Lewis* v. *Frick*, 291.

2. *Proceedings provided for by §§ 1979–1981, 5510, Rev. Stat., differentiated.*
The criminal proceedings and punishment for public wrongs provided by Rev. Stat., §§ 1979–1981 and 5510 and the actions in law and equity for the redress of private injuries resulting from violations of laws of the United States also provided by §§ 1979–1981 are distinct. *O'Sullivan* v. *Felix*, 318.

3. *Venue; power of State to restrict.*
A State cannot create a transitory cause of action and at the same time destroy the right to sue thereon in any court having jurisdiction although in another State. *Tennessee Coal, I. & R. R. Co.* v. *George*, 354.

4. *Venue; extraterritorial operation of state statute.*
The jurisdiction of a court over a transitory cause of action cannot be defeated by the extraterritorial operation of a statute of another State even though the latter created the cause of action. *Ib.*

5. *Venue; effect of Alabama statute restricting, on right of action in another State.*
The statute of Alabama making the master liable to the employé for defective machinery created a transitory cause of action which can be sued on in another State having jurisdiction of the parties, notwithstanding the statute provides that all actions must be brought thereunder in the courts of Alabama and not elsewhere. *Ib.*

6. *Against United States or member of Indian Tribe; right conferred by § 2 of act of May 29, 1908.*
Section 2 of the act of May 29, 1908, c. 216, 35 Stat. 144, conferring

jurisdiction on the Court of Claims to hear and determine claims of certain Indian traders against the Menominee Tribe of Indians and certain members thereof, created no new right in favor of such traders except removal of the bar of limitations, and gave no right to sue the United States or any member of the Tribe in his individual capacity as disassociated from his dependent condition as an Indian subject. *Green* v. *Menominee Tribe*, 558.

7. *On bond of government contractor, by materialman or laborer; time for bringing.*

Under the act of August 13, 1894, as amended by the act of February 24, 1905, a materialman or laborer may not bring suit on the contractor's bond in the Federal court in the name of the United States for his use and benefit, within six months from completion and settlement, even though the United States has not asserted any, and has no, claim against the contractor or his sureties. *Texas Portland Cement Co.* v. *McCord*, 157.

8. *On bond of government contractor; time for bringing; effect of intervention.*

Where the original bill was prematurely filed, an intervention after the six month, and before the twelve month, period is not effectual as such or as an original bill. *Ib.*

9. *On bond of government contractor; time for bringing; effect of filing amended bill.*

An amended bill filed more than one year after completion of the work and settlement, if treated as an original bill, is filed too late. *Ib.*

10. *Termination of litigation; public policy.*

It is in the interest of the Republic that litigation should come to an end. *De Bearn* v. *Safe Deposit Co.*, 24.

See ADMIRALTY; EMINENT DOMAIN, 3; EMPLOYERS' LIABILITY ACT, 2, 3, 10; INDIANS, 6; LIMITATION OF ACTIONS; RAILROADS, 2; RIPARIAN RIGHTS, 2.

ACTS OF CONGRESS.

ADMIRALTY.—Rev. Stat., §§ 4283 *et seq.* (see Admiralty, 1–7): *White* v. *Island Transportation Co.*, 346; *The Titanic*, 718. Rev. Stat., §§ 4284, 4285 (see Admiralty, 6, 7): *The Titanic*, 718.

BRIBERY.—Crim. Code, §§ 39, 117 (see Bribery, 1, 4): *United States* v. *Birdsall*, 223.

CIVIL RIGHTS.—Rev. Stat., §§ 1979, 1981 (see Actions, 2): *O'Sullivan*

v. *Felix*, 318. Sections 5508, 5509 (see Limitation of Actions, 1, 2): *Ib.*

COURT OF CLAIMS.—Act of May 29, 1908, § 2, 35 Stat. 144, c. 216 (see Actions, 6): *Green* v. *Menominee Tribe*, 558.

CRIMINAL LAW.—Penal Code, § 37 (see Mails, 3): *United States* v. *Foster*, 515. Sections 206, 208 (see Mails, 3): *Ib.* Section 328 (see Jurisdiction, E): *Apapas* v. *United States*, 587. Rev. Stat., § 1044 (see Contempt of Court, 2, 3): *Gompers* v. *United States*, 604. Section 5510 (see Actions, 2): *O'Sullivan* v. *Felix*, 318.

EMPLOYERS' LIABILITY ACT of 1908 (see Employers' Liability Act): *Seaboard Air Line* v. *Horton*, 492; *Illinois Central R. R. Co.* v. *Behrens*, 473; *Grand Trunk Western Ry. Co.* v. *Lindsay*, 42.

EXECUTIVE DEPARTMENTS.—Rev. Stat., § 161 (see Mails, 1): *United States* v. *Foster*, 515.

GOVERNMENT CONTRACTS.—Act of August 13, 1894, as amended by act of February 24, 1905 (see Actions, 7): *Texas Portland Cement Co.* v. *McCord*, 157.

IMMIGRATION.—Alien Immigration Law of 1907 (see Immigration): *Lewis* v. *Frick*, 291.

INDIANS.—Act of March 2, 1889, 25 Stat. 1013, c. 422 (see Indians, 8): *Bowling* v. *United States*, 528. Act of July 1, 1892, 23 Stat. 641 (see Indians, 4, 5): *Franklin* v. *Lynch*, 269. Act of April 21, 1904, 33 Stat. 189, c. 1402 (see Indians, 1, 3): *Ib.* Act of May 29, 1908, 35 Stat. 444, c. 216 (see Indians, 9): *Green* v. *Menominee Tribe*, 558. Rev. Stat., § 2103 (see Indians, 10): *Ib.* Section 2116 (see Indians, 2): *Franklin* v. *Lynch*, 269.

INTERSTATE COMMERCE.—Act of February 4, 1887, § 6, 24 Stat. 379, c. 104 (see Interstate Commerce, 12, 31): *Boston & Maine R. R.* v. *Hooker*, 97. Section 22 (see Interstate Commerce, 31): *Ib.* Act of June 18, 1910, 36 Stat. 539, c. 309 (see Interstate Commerce, 19): *Ib.* Hepburn Act (see Interstate Commerce, 29, 30): *Ib.* Carmack Amendment (see Interstate Commerce, 11): *Atchison, T. & S. F. Ry. Co.* v. *Robinson*, 173; *Atchison, T. & S. F. Ry. Co.* v. *Moore*, 182 (see Interstate Commerce, 20, 29, 30): *Boston & Maine R. R.* v. *Hooker*, 97. Hours of Service Act of 1907 (see Interstate Commerce, 17, 18): *Erie R. R. Co.* v. *New York*, 671.

JUDICIARY.—Judicial Code, § 134 (see Jurisdiction, A 1): *Itow* v. *United States*, 581. Section 237 (see Jurisdiction, A 5): *Atchison, T. & S. F. Ry. Co.* v. *Robinson*, 173; *Atchison, T. & S. F. Ry. Co.* v. *Moore*, 182 (see Jurisdiction, A 6): *Seaboard Air Line* v. *Horton*, 492 (see Jurisdiction, A 7, 8, 11, 14): *Logan* v. *Davis*, 613; *Ennis Water Co.* v. *Ennis*, 652; *Bowe* v. *Scott*, 658; *McDonald* v. *Oregon R. R. & Nav. Co.*, 665; (see Practice and Procedure, 16): *Missouri, K. & T. Ry. Co.* v. *Cade*, 642. Section 238 (see Jurisdiction,

A 21-26): *Farrugia* v. *Philadelphia & Reading Ry. Co.*, 352; *Apapas* v. *United States*, 587. Section 247 (see Jurisdiction, A 2, 3): *Itow* v. *United States*, 581. Criminal Appeals Act of 1907 (see Jurisdiction, A 27, 28): *United States* v. *Birdsall*, 223; *United States* v. *Foster*, 515.

LIMITATIONS.—Rev. Stat., § 1047 (see Limitation of Actions, 2): *O'Sullivan* v. *Felix*, 318.

MAILS.—Act of March 3, 1883, 22 Stat. 600, c. 142 (see Mails, 2): *United States* v. *Foster*, 515.

NAVY.—Appropriation Acts of 1906 and 1907 and acts of June 30, 1902, and May 11, 1908 (see Army and Navy): *United States* v. *Vulte*, 509.

PUBLIC LANDS.—Act of March 3, 1887, 24 Stat. 556, c. 376 (see Jurisdiction, A 7): *Logan* v. *Davis*, 613; (see Public Lands, 6, 7, 8): *Ib.* (see Statutes, A 6): *Ib.* Rev. Stat., §§ 2324, 2325, 2333, 2335 (see Public Lands, 1, 2, 10): *El Paso Brick Co.* v. *McKnight*, 250.

SAFETY APPLIANCE ACTS. (See Employers' Liability Act, 4, 5): *Grand Trunk Western Ry. Co.* v. *Lindsay*, 42; *Seaboard Air Line* v. *Horton*, 492.

TRADE-MARK ACT of February 20, 1905, § 5, 33 Stat. 724, c. 592 (see Trade-Marks): *Thaddeus Davids Co.* v. *Davids Mfg. Co.*, 461.

ADMINISTRATIVE INQUIRIES.

See ACTIONS, 1.

ADMIRALTY.

1. *Limitation of liability; jurisdiction of District Court; effect of pleading.*

The jurisdiction of a District Court in a proceeding in admiralty to limit the liability of a ship owner, under Rev. Stat., §§ 4283 *et seq.*, is not ousted merely because a damage claimant puts in issue the allegation in the petition or libel that the damage was occasioned without the privity or knowledge of the owner. (*Butler* v. *Boston Steamship Co.*, 130 U. S. 527.) *White* v. *Island Transportation Co.*, 346.

2. *Limitation of liability; jurisdiction of District Court; settlement of questions of fact.*

In a proceeding in admiralty under Rev. Stat., §§ 4283 *et seq.*, questions of fact, whether jurisdictional or otherwise, are to be settled by a trial; and where the petition alleges that the damage or injury, liability for which is sought to be limited, was occasioned without the privity or knowledge of the owner, and the damage claimant waives proof of that allegation, it must be taken as true, and there will be no defect of jurisdiction in that regard. *Ib.*

3. *Limitation of liability; right to maintain proceeding for.*
Under Rev. Stat., §§ 4283 *et seq.*, and admiralty rules 53–57, a proceeding to limit the liability of the ship owner may be maintained whether there be a plurality of claims or only one. *Ib.*

4. *Limitation of liability; right of foreign ship in courts of United States.*
This case falls within the general proposition that a foreign ship may resort to the courts of the United States for a limitation of liability under § 4283, Rev. Stat. (*The Scotland*, 105 U. S. 24.) *The Titanic*, 718.

5. *Limitation of liability; power of Congress as to.*
It is competent for Congress to enact that in certain matters belonging to admiralty jurisdiction parties resorting to our courts shall recover only to such extent or in such way as it marks out. (*Butler* v. *Boston S. S. Co.*, 130 U. S. 527.) *Ib.*

6. *Limitation of liability; right of foreign ship to avail of in courts of United States.*
In the case of a disaster upon the high seas, where only a single vessel of British nationality is concerned and there are claimants of many different nationalities, and where there is nothing before the court to show what, if any, is the law of the foreign country to which the vessel belongs, touching the owner's liability for such disaster, such owner can maintain a proceeding under §§ 4283, 4284 and 4285, Rev. Stat., and Rules 54 and 56 in Admiralty. *Ib.*

7. *Limitation of liability; right of foreign ship to avail of in courts of United States.*
If it appears in such a case that the law of the foreign country to which the vessel belongs makes provision for the limitation of the vessel owner's liability, upon terms and conditions different from those prescribed in the statutes of this country, the owner can, nevertheless, maintain a proceeding in the courts of the United States under §§ 4283, 4284 and 4285, Rev. Stat., and Rules 54 and 56 in Admiralty. *Ib.*

8. *Limitation of liability; law applicable in case of foreign ship resorting to courts of United States.*
In such a proceeding the courts of the United States will enforce the law of the United States in respect of the amount of such owner's liability, and not that of the country to which the vessel belongs. *Ib.*

AGENCY.
See PUBLIC LANDS, 15.

ALASKA.
See JURISDICTION, A 1, 3, 4.

ALIENATION OF LAND.
See INDIANS.

ALIENS.
See IMMIGRATION.

ALLOTTEE INDIANS.
See INDIANS.

AMBIGUITIES.
See GRANTS, 1.

AMENDMENT.
See PLEADING, 1.

AMENDMENTS TO CONSTITUTION.
Fifth.—*See* CONSTITUTIONAL LAW, 13;
EMINENT DOMAIN, 2.
Fourteenth.—*See* CONSTITUTIONAL LAW;
JURISDICTION, A 13, 14.

APPEAL AND ERROR.
1. *Questions open on; excessiveness of verdict.*
Whether upon the evidence the verdict is excessive is a matter for the trial court and not to be reëxamined on writ of error. (*Herencia* v. *Guzman*, 219 U. S. 44.) *Southern Ry. Co.* v. *Bennett*, 80.

2. *Questions reviewable; effect of want of exception to failure to charge jury.*
Where the court was not requested to charge that the employé had assumed the risk of want of proper appliances, and no exception was taken to the failure to charge as to assumption of risk, the appellate court is not called on to consider that question. *Myers* v. *Pittsburgh Coal Co.*, 184.

3. *Writ of error; sufficiency as to return day.*
A writ of error in terms returnable within thirty days from the date

thereof substantially complies with the return day provision in clause 5 of Rule 8 of this court. *Seaboard Air Line* v. *Horton*, 492.

4. *Penalty for prosecution for delay.*

Where the record shows that the case was carefully and fully considered in both of the courts below and the contentions, advanced to support the assertion that the interpretation of the Employers' Liability Act is involved are so frivolous as to justify the conclusion that the writ of error is prosecuted for delay, this court will impose a penalty, in this case of five per cent. upon the amount involved, under paragraph 2 of Rule 23. *Southern Ry. Co.* v. *Gadd*, 572.

See ATTACHMENT AND GARNISHMENT, 6;
JURISDICTION.

APPROPRIATION ACTS.

See STATUTES, A 8, 10.

ARMY AND NAVY.

Naval officers' pay; foreign service; Hawaii and Porto Rico; act of June 30, 1902.

The provision in the appropriation acts of 1906 and 1907 excepting Hawaii and Porto Rico from the operation of the provision for additional pay for officers in foreign service is not to be construed as prevailing over the explicit provisions of the act of June 30, 1902, providing for such additional pay including those places, and the salary provided by law of officers on foreign service referred to in the act of May 11, 1908, is that fixed by the act of June 30, 1902. *United States* v. *Vulte*, 509.

ASSESSMENT AND TAXATION.

See TAXES AND TAXATION.

ASSUMPTION OF RISK.

See EMPLOYERS' LIABILITY ACT, 5, 9;
MASTER AND SERVANT, 1, 2.

ATTACHMENT AND GARNISHMENT.

1. *Authority under state law.*

In this case the state court has sustained attachments as authorized by state law. *De Bearn* v. *Safe Deposit Co.*, 24.

2. *Foreign creditors' right to; authority of State to confer.*

It is within the power of the State to authorize a foreign creditor to

attach bonds within the State deposited under directions of the state court in the exercise of its lawful powers, and which cannot be removed from the State without the authority of the state court. *Ib.*

3. *Of registered bonds; duty of court as to.*
Even though such bonds may have been registered by a prior order of the state court, it may be the duty of that court under the state law to remove such registry in order to protect attaching creditors. *Ib.*

4. *Of bonds; effect to deny owner due process of law.*
An owner of bonds deposited in a safe deposit vault under an order of the state court, *held*, in this case, not to have been deprived of his property without due process of law by the attachment of such bonds under process issued by the state court in accordance with the law of the State as determined by its highest court. *Ib.*

5. *Notice; existence of statute as.*
The existence of a garnishment statute is notice to the owner of claims that he must be ready to be represented in case the debt is attached. *Herbert* v. *Bicknell*, 70.

6. *Practice under § 2114, Rev. Stat. Hawaii.*
In this case, as the defendant whose property was attached under § 2114, Rev. Stat. Hawaii, had knowledge of the attachment and judgment before the time for writ of error to the Supreme Court of the Territory had expired, he should have pursued that remedy and not suffered default and attempt to quash on the ground of want of due process in the service. *Ib.*

See CONSTITUTIONAL LAW, 13.

BAGGAGE.

See INTERSTATE COMMERCE.

BILLS OF LADING.

See INTERSTATE COMMERCE, 20.

BONDS.

See ACTIONS, 7, 8, 9;
ATTACHMENT AND GARNISHMENT, 2, 3, 4.

BRIBERY.

1. *Official action within meaning of §§ 39 and 117, Criminal Code.*
Sections 39 and 117, Criminal Code, 35 Stat. 1109, defining and pun-

ishing the giving and accepting of bribes, cover every action within the range of official duty. *United States* v. *Birdsall*, 223.

2. *Same.*

It is not necessary in order to constitute an act of an officer of the United States official action that it be prescribed by statute; it is sufficient if it is governed by a lawful requirement, whether written or established by custom, of the Department under whose authority the officer is acting. *Ib.*

3. *Official action on part of Commissioner of Indian Affairs.*

The action of the Commissioner of Indian Affairs in advising the President of the United States whether or not clemency should be granted to one convicted of violating liquor laws in the Indian country is official action, and it is within the competency of the office to establish regulations requiring from all persons connected with the office true and disinterested reports to the Commissioner on which to base such advice. *Ib.*

4. *Same.*

The powers of the Indian Office to aid in suppressing the liquor traffic in Indian country extend to every matter to which such aid is appropriate; and the giving of recommendations to a Federal judge or attorney as to sentences of those convicted of violating the liquor laws is an official duty within the meaning of §§ 39 and 117, Criminal Code, and the giving of gifts to, and acceptance thereof by, officers in that department to influence their reports and recommendations constitute bribery under, and are punishable by, such sections. *Ib.*

BRIDGES.

See INTERSTATE COMMERCE, 23, 25;
RAILROADS, 7.

BURDEN OF PROOF

See EVIDENCE, 3.

CARMACK AMENDMENT.

See INTERSTATE COMMERCE, 11, 20, 29, 30.

CARRIERS.

See COMMON CARRIERS; CONSTITUTIONAL LAW, 11, 12;
CONGRESS, POWERS OF, 2; INTERSTATE COMMERCE;
RAILROADS.

CASES DISTINGUISHED.

Buck v. *Beach*, 206 U. S. 392, distinguished in *Wheeler* v. *Sohmer*, 434.
Caldwell v. *North Carolina*, 187 U. S. 622, distinguished in *Browning* v. *Waycross*, 16.
Colorado Coal & Iron Co. v. *United States*, 123 U. S. 307, distinguished in *Diamond Coal & Coke Co.* v. *United States*, 236.
Dozier v. *Alabama*, 218 U. S. 124, distinguished in *Browning* v. *Waycross*, 16.
Employers' Liability Cases, 207 U. S. 463, distinguished in *Illinois Central R. R. Co.* v. *Behrens*, 473.
Gulf, C. & S. F. Ry. Co. v. *Ellis*, 165 U. S. 150, distinguished in *Missouri, K. & T. Ry.* v. *Cade*, 642.
Hazelton v. *Sheckells*, 202 U. S. 71, distinguished in *Valdes* v. *Larrinaga*, 705.
Knepper v. *Sands*, 194 U. S. 476, distinguished in *Logan* v. *Davis*, 613.
Pennsylvania v. *Hughes*, 191 U. S. 477, distinguished in *Boston & Maine R. R.* v. *Hooker*, 97.
Rearick v. *Pennsylvania*, 203 U. S. 507, distinguished in *Browning* v. *Waycross*, 16.
St. Louis, I. M. & S. Ry. Co. v. *Wynne*, 224 U. S. 354, distinguished in *Kansas City Southern Ry. Co.* v. *Anderson*, 325.

CASES FOLLOWED.

Adams v. *Woods*, 2 Cranch, 336, followed in *Gompers* v. *United States*, 604.
Atchison, T. & S. F. Ry. Co. v. *Robinson*, 233 U. S. 173, followed in *Atchison, T. & S. F. Ry. Co.* v. *Moore*, 182.
Atchison, T. & S. F. Ry. Co. v. *Sowers*, 213 U. S. 55, followed in *Tennessee Coal, I. & R. R. Co.* v. *George*, 354.
Atlantic Phosphate Co. v. *Grafflin*, 114 U. S. 492, followed in *American Iron & Steel Mfg. Co.* v. *Seaboard Air Line Railway*, 261.
Bank of United States v. *Dandridge*, 12 Wheat. 64, followed in *Denver & Rio Grande R. R. Co.* v. *Arizona & Colorado R. R. Co.*, 601.
Barnes v. *Alexander*, 232 U. S. 117, followed in *Valdes* v. *Larrinaga*, 705.
Bienville Water Supply Co. v. *Mobile*, 186 U. S. 212, followed in *De Bearn* v. *Safe Deposit Co.*, 24.
Butler v. *Boston Steamship Co.*, 130 U. S. 527, followed in *White* v. *Island Transportation Co.*, 346; *The Titanic*, 718.
Capital City Dairy Co. v. *Ohio*, 183 U. S. 238, followed in *Hammond Packing Co.* v. *Montana*, 331.
Castillo v. *McConnico*, 168 U. S. 674, followed in *McDonald* v. *Oregon R. R. & Nav. Co.*, 665.
Chicago, M. & St. P. Ry. Co. v. *Polt*, 232 U. S. 165, followed in *Kansas City Southern Ry. Co.* v. *Anderson*, 325.

Crenshaw v. *Arkansas*, 227 U. S. 389, followed in *Singer Sewing Machine Co.* v. *Brickell*, 304.
Dahl v. *Raunheim*, 132 U. S. 260, followed in *El Paso Brick Co.* v. *McKnight*, 250.
Dimmick v. *Tompkins*, 194 U. S. 194, followed in *De Bearn* v. *Safe Deposit Co.*, 24.
Graham v. *West Virginia*, 224 U. S. 616, followed in *Carlesi* v. *New York*, 51.
Great Northern Ry. v. *O'Connor*, 232 U. S. 508, followed in *Atchison, T. & S. F. Ry. Co.* v. *Robinson*, 173.
Gritts v. *Fisher*, 224 U. S. 640, followed in *Franklin* v. *Lynch*, 269.
Heckman v. *United States*, 224 U. S. 413, followed in *Bowling and Miami Investment Co.* v. *United States*, 528.
Herencia v. *Guzman*, 219 U. S. 44, followed in *Southern Ry. Co.* v. *Bennett*, 80.
Holt v. *Henley*, 232 U. S. 637, followed in *Detroit Steel Co.* v. *Sistersville Brewing Co.*, 712.
Itow v. *United States*, 233 U. S. 581, followed in *Apapas* v. *United States*, 587.
Lapina v. *Williams*, 232 U. S. 78, followed in *Lewis* v. *Frick*, 291.
Lawton v. *Steele*, 152 U. S. 133, followed in *Smith* v. *Texas*, 630.
McDonald v. *Massachusetts*, 180 U. S. 311, followed in *Carlesi* v. *New York*, 51.
McLaine v. *Rankin*, 197 U. S. 154, followed in *O'Sullivan* v. *Felix*, 318.
McLean v. *Arkansas*, 211 U. S. 539, followed in *Erie Railroad Co.* v. *Williams*, 685.
Minis v. *United States*, 15 Pet. 423, followed in *United States* v. *Vulte*, 509.
Nadal v. *May*, 233 U. S. 447, followed in *Denver & Rio Grande R. R. Co.* v. *Arizona & Colorado R. R. Co.*, 601.
Northern Pacific Ry. Co. v. *Washington*, 222 U. S. 370, followed in *Erie Railroad Co.* v. *New York*, 671.
Ortega v. *Lara*, 202 U. S. 339, followed in *Nadal* v. *May*, 447.
Ozan Lumber Co. v. *Union National Bank*, 207 U. S. 251, followed in *German Alliance Ins. Co.* v. *Lewis*, 389.
Pedersen v. *Delaware, L. & W. R. R. Co.*, 229 U. S. 146, followed in *Illinois Central R. R. Co.* v. *Behrens*, 473.
Pennoyer v. *Neff*, 95 U. S. 714, followed in *Herbert* v. *Bicknell*, 70.
Powell v. *Pennsylvania*, 127 U. S. 678, followed in *Hammond Packing Co.* v. *Montana*, 331.
Prentis v. *Atlantic Coast Line*, 211 U. S. 210, followed in *San Joaquin &c. Canal & Irrigation Co.* v. *Stanislaus County*, 454.
Quong Wing v. *Kirkendall*, 223 U. S. 59, followed in *Hammond Packing Co.* v. *Montana*, 331.

Santa Fe Central Ry. v. *Friday*, 232 U. S. 694, followed in *Nadal* v. *May*, 447.
Seaboard Air Line v. *Duvall*, 225 U. S. 477, followed in *Grand Trunk Ry. Co.* v. *Lindsay*, 42.
Seaboard Air Line v. *Seegers*, 207 U. S. 73, followed in *Kansas City Southern Ry. Co.* v. *Anderson*, 325.
Second Employers' Liability Cases, 223 U. S. 1, followed in *Seaboard Air Line* v. *Horton*, 492.
Smith v. *Alabama*, 124 U. S. 465, followed in *Smith* v. *Texas*, 630.
Southern Pacific Co. v. *Schuyler*, 227 U. S. 601, followed in *Cornell Steamboat Co.* v. *Phœnix Construction Co.*, 593.
Swift & Co. v. *United States*, 196 U. S. 375, followed in *Kansas City Southern Ry. Co.* v. *Kaw Valley District*, 75.
The Scotland, 105 U. S. 24, followed in *The Titanic*, 718.
Tiger v. *Western Investment Co.*, 221 U. S. 286, followed in *Bowling and Miami Investment Co.* v. *United States*, 528.
United States v. *Delaware & Hudson Co.*, 213 U. S. 366, followed in *German Alliance Ins. Co.* v. *Lewis*, 389.
United States v. *Langston*, 118 U. S. 389, followed in *United States* v. *Vulte*, 509.
United States v. *Southern Pacific R. R. Co.*, 184 U. S. 49, followed in *Logan* v. *Davis*, 613.
United States v. *Winona & St. Peter R. R. Co.*, 165 U. S. 463, followed in *Logan* v. *Davis*, 613.
Zakonaite v. *Wolf*, 226 U. S. 272, followed in *Lewis* v. *Frick*, 291.

CERTIFICATE.

See JURISDICTION, A 2.

CERTIORARI.

Denial of one of two petitions for, to review same judgment.

Where two parties petition for writs of certiorari to review the same judgment, but the entire matter can be disposed of on one petition, the other will be denied. *Gompers* v. *United States*, 604.

See JURISDICTION, A 2, 29.

CHARTERS.

See CONSTITUTIONAL LAW, 10, 18;
CORPORATIONS;
COURTS.

CHATTELS.

See CONDITIONAL SALE;
TITLE.

CITIZENSHIP.
See INDIANS, 11.

CIVIL RIGHTS.
See ACTIONS, 2.

CLASSIFICATION FOR REGULATION.
See CONSTITUTIONAL LAW, 16, 19–24, 30;
STATES, 1, 2.

COLLISION.
See NAVIGABLE WATERS.

COMMERCE.
See CONGRESS, POWERS OF, 2;
CONSTITUTIONAL LAW, 1, 2;
INTERSTATE COMMERCE.

COMMISSIONER OF INDIAN AFFAIRS.
See BRIBERY, 3;
EXECUTIVE DEPARTMENTS.

COMMON CARRIERS.
Power of State to regulate use of equipment.
Whether the common law or statutory provisions apply to a case is for the state court to determine, and so *held*, that in Iowa the State Railroad Commission has power under the state law to require common carriers to use the equipment of connecting carriers to transport shipments from the points of original destination to other points within the State. *Chicago, M. & St. P. Ry. Co.* v. *Iowa*, 334.
See CONGRESS, POWERS OF, 2; INTERSTATE COMMERCE;
CONSTITUTIONAL LAW, 11, 12; RAILROADS.

COMMON LAW.
See CONDITIONAL SALE, 1.

CONDITIONAL SALE.
1. *Validity at common law.*
The common law knows no objection to what is commonly called a conditional sale. *Detroit Steel Cooperage Co.* v. *Sistersville Brewing Co.*, 712.

2. *Right of vendor as against mortgagee of real estate to which chattel attached.*

Chattels, such as tanks, furnished for a brewery under a contract of conditional sale duly recorded, although indispensable as part of the completed structure and attached to the real estate as between the mortgagor and the mortgagee, are not so attached to the realty as to become a part thereof and subject to the lien of a prior mortgage as between the vendor of the tanks and the mortgagee, if, as in this case, they can be removed without the physical disintegration of the building. (*Holt* v. *Henley*, 232 U. S. 637.) *Ib.*

3. *Right of vendor of chattel attached to freehold.*

The mere knowledge that a chattel, delivered under a contract of conditional sale, will be attached to the freehold, is of no importance, except as against innocent purchasers for value before the sale is recorded. *Ib.*

CONFLICT OF LAWS.

See ADMIRALTY, 7, 8;
INTERSTATE COMMERCE, 9, 10, 18;
PUBLIC LANDS, 11.

CONGRESS, ACTS OF.

See ACTS OF CONGRESS.

CONGRESS, POWERS OF.

1. *Exclusiveness of jurisdiction.*

After Congress acts on a matter within its exclusive jurisdiction there is no division of the field of regulation. *Erie R. R. Co.* v. *New York*, 671.

2. *Railroads; scope of power to regulate liability for injuries to employés.*

When a railroad is a highway for both interstate and intrastate commerce, and the two classes of traffic are interdependent in point of both movement and safety, Congress may, under the power committed to it by the commerce clause of the Constitution, regulate the liability of the carrier for injuries suffered by an employé engaged in general work pertaining to both classes of commerce, whether the particular service performed at the time, isolatedly considered, is in interstate or intrastate commerce. *Employers' Liability Cases*, 207 U. S. 463, distinguished. *Illinois Central R. R. Co.* v. *Behrens*, 473.

See ADMIRALTY, 5;
EMINENT DOMAIN, 3;
INTERSTATE COMMERCE, 10, 23.

CONSPIRACY.

See MAILS, 3.

CONSTITUTIONAL LAW.

1. *Commerce clause; state interference; separability of statute; validity of Alabama sewing machine license tax.*

While a state license statute if void in part may be wholly void where its provisions are not separable, it may be sustained so far as it relates to business wholly intrastate and held inapplicable as to interstate commerce; and so *held* that the Alabama sewing machine license tax is constitutional as to those agencies of a foreign corporation which carry on an intrastate business and inapplicable as to those agencies of such corporation which carry on a wholly interstate business. *Singer Sewing Machine Co.* v. *Brickell*, 304.

2. *Commerce clause; state interference, by statute prescribing qualifications of railroad conductors; quære.*

Quære, whether a state statute prohibiting any person from acting as a conductor on a railroad train without having for two years prior thereto worked as a brakeman or conductor of a freight train and prescribing no other qualifications, is not unconstitutional under the commerce clause as applied to conductors employed on trains engaged in interstate commerce. *Smith* v. *Texas*, 630.

See INFRA, 14, 18;
CONGRESS, POWERS OF, 2;
INTERSTATE COMMERCE.

3. *Contract; liberty of; scope of guaranty.*

The liberty of contract guaranteed by the Fourteenth Amendment is not more intimately involved in price regulation than in other proper forms of regulation of business and property affected by a public use, and so *held* as to the regulation of rates of fire insurance. *German Alliance Ins. Co.* v. *Kansas*, 389.

4. *Contract; liberty of; conditions to which subject.*

While it is a fundamental principle that personal liberty includes the power to make contracts, the liberty of making contracts is subject to conditions in the interest of the public welfare, and whether that principle or those conditions shall prevail cannot be defined by any precise or universal formula. Each case must be determined by itself. *Erie R. R. Co.* v. *Williams*, 685.

See INFRA, 16.

5. *Contract impairment; contract within constitutional prohibition.*
When the State declares that it is bound if its offer to grant a privilege, which plainly contemplates the establishment of a plant and the assumption of a duty to perform the services incident to a public utility, is accepted, the grant resulting from the acceptance constitutes a contract and vests a property right in the accepting party which is within the protection of the contract clause of the Federal Constitution. *Russell* v. *Sebastian*, 195.

6. *Contract impairment; right of public utility to extend service; effect of subsequent amendment of state constitution.*
The amendment of 1911 to § 19 of art. XI of the California constitution of 1879 as amended in 1884 and municipal ordinances of Los Angeles adopted in pursuance thereof, were ineffectual under the contract clause of the Federal Constitution to deprive a corporation which had accepted the offer of the State, contained in § 19 before the amendment, of its right to continue to lay pipes in the streets of Los Angeles in accordance with the general regulations of the municipality in regard to such work. *Ib.*

7. *Contract impairment; considerations in determining effect of state statute.*
Bad motives need not be imputed to a legislature in order to render a statute unconstitutional under the contract clause; it is not the motive causing the enactment, but the effect thereof on contract rights, which determines the question of constitutionality. *Carondelet Canal & Nav. Co.* v. *Louisiana*, 362.

8. *Contract impairment; effect of repeal of law creating contract.*
The repeal of a law which constitutes a legislative contract is an impairment of its obligation. *Ib.*

9. *Contract impairment; effect of state statute to create contract and of repeal as impairment.*
The acts of 1857 and 1858 of the legislature of Louisiana did grant certain contract rights to the Carondelet Canal and Navigation Company which are within the protection of the contract clause of the Federal Constitution, and the act of 1906 repealing the act of 1858 impaired the contract obligation of the latter. *Ib.*

10. *Contract impairment; effect of state statute altering manner or time of payment of corporate employés.*
Alteration of the manner or time of payment of employés does not defeat or substantially impair the object of the charter granted to a

railroad corporation, and a state statute, otherwise valid, regulating such time and manner, is not unconstitutional as impairing such charter. *Erie R. R. Co.* v. *Williams*, 685.

See INFRA, 18.

Double jeopardy.—See CRIMINAL LAW, 2.

11. *Due process of law; deprivation of property; effect of state regulation of use of equipment by common carriers.*

A State may, so long as it acts within its own jurisdiction and not in hostility to any Federal regulation of interstate commerce, compel a carrier to accept, for further reshipment over its lines to points within the State, cars already loaded and in suitable condition; and an order to that effect by the State Railroad Commission is not unconstitutional as depriving the carrier of its property without due process of law. *Chicago, M. & St. P. Ry. Co.* v. *Iowa*, 334.

12. *Due process of law; deprivation of property; effect of state regulation of common carriers.*

Where it appears that an order of the State Railroad Commission simply required the carrier to continue a former practice, and the record does not disclose that it involves additional expense over the new practice proposed, this court is not justified in holding that the order is unconstitutional as depriving the carrier of its property without due process of law because it subjects it to an unreasonable expense. *Ib.*

13. *Due process of law; deprivation of property; effect of statutory provision for service of process.*

The law assumes that property is always in the possession of its owner in person or by agent, and proceeds on the theory that its seizure will inform him not only that it has been taken into custody but that he must look to any proceeding authorized by law upon such seizure for its condemnation and sale; and so *held* that an attachment and judgment under § 2114, Rev. Stat. Hawaii, does not on account of its provisions for service of the summons by leaving it at his last known place of abode deprive a non-resident of any rights guaranteed by the Fifth Amendment. (*Pennoyer* v. *Neff*, 95 U. S. 714.) *Herbert* v. *Bicknell*, 70.

14. *Due process and equal protection of the law; interference with interstate commerce; validity of state license tax.*

The separate license tax imposed by the statutes of Alabama on the business of selling or delivering sewing machines, either in person or through agents, for each county and for each wagon and team used

in delivering the same is not, as to a corporation having regular stores established in the different counties to which it sends its goods in bulk and from which they are sold on orders to be approved by it at its home office, unconstitutional as denying due process of law, or as interfering with interstate commerce, or as denying equal protection of the law because it does not apply to merchants selling such machines at regularly established places of business. *Singer Sewing Machine Co.* v. *Brickell*, 304.

15. *Due process and equal protection of the law; right of State to forbid manufacture of oleomargarine.*

A State may forbid the manufacture of oleomargarine altogether without violating the due process or equal protection provisions of the Fourteenth Amendment. (*Powell* v. *Pennsylvania*, 127 U. S. 678.) *Hammond Packing Co.* v. *Montana*, 331.

16. *Due process; equal protection; liberty of contract; validity of Kansas statute of 1909 regulating rates of fire insurance.*

The Kansas statute of 1909, so far as it provides for regulating rates of fire insurance, is not unconstitutional under the Fourteenth Amendment as depriving insurance companies of their property without due process of law, as abridging the liberty of contract or as denying companies charging regular premiums the equal protection of the law by excepting farmers' mutual insurance companies from its operation. *German Alliance Ins. Co.* v. *Kansas*, 389.

17. *Due process of law; effect of state taxation of promissory notes of non-resident makers.*

The provision in the New York Inheritance Tax Statute, imposing a transfer tax on property within the State belonging to a non-resident at the time of his death, is not unconstitutional under the due process clause of the Fourteenth Amendment as applied to promissory notes the makers of which are non-residents of that State. *Buck* v. *Beach*, 206 U. S. 392, distinguished. *Wheeler* v. *Sohmer*, 434.

18. *Due process of law; impairment of contract obligation; interference with interstate commerce; validity of payment of wages provision of New York Labor Law of 1907.*

The provision of the Labor Law of New York of 1907 requiring semi-monthly payments in cash of wages of employés of certain specified industries, including railroads, is not unconstitutional as denying due process of law, or, as to a railroad company incorporated in that State, as impairing the obligation of the charter contract; nor is it,

as it has been construed by the highest court of that State, a direct burden on interstate commerce; but, as so construed, it is a valid exercise of the police power of the State. *Erie R. R. Co.* v. *Williams*, 685.

See ATTACHMENT AND GARNISHMENT, 4;
EVIDENCE, 3;
JURISDICTION, A 13, 14.

Eminent domain.—*See* EMINENT DOMAIN, 2.

19. *Equal protection of the law; reasonableness of classification for regulation.*

A state statute imposing double damages and otherwise valid, is not unconstitutional as denying the equal protection of the laws because it applies only to railroad companies and not to litigants in general. The classification is not arbitrary. (*Seaboard Air Line* v. *Seegers*, 207 U. S. 73.) *Kansas City Southern Ry. Co.* v. *Anderson*, 325.

20. *Equal protection of the law; reasonableness of classification of sellers of sewing machines.*

The classification of merchants selling sewing machines at regular places of business as distinguished from a manufacturer selling them by traveling salesmen is not so unreasonable and arbitrary as to render it a denial of equal protection of the law under the Fourteenth Amendment. *Singer Sewing Machine Co.* v. *Brickell*, 304.

21. *Equal protection of the law; classification for taxation; discretion of State.*

The State has a wide range of discretion in establishing classes for revenue taxes, and its laws will not be set aside as discriminatory if there is any rational basis for the classification. *Ib.*

22. *Equal protection of the law; reasonableness of classification by State; oleomargarine.*

So long as it does not interfere with interstate commerce, a State may restrict the manufacture of oleomargarine in a way that does not hamper that of butter. The classification is reasonable and does not offend the equal protection clause of the Fourteenth Amendment. (*Capital City Dairy Co.* v. *Ohio*, 183 U. S. 238.) *Hammond Packing Co.* v. *Montana*, 331.

23. *Equal protection of the laws; reasonableness of classification for regulation of insurance concerns.*

A discrimination is not invalid under the equal protection provision

of the Fourteenth Amendment if not so arbitrary as to be beyond the wide discretion that a legislature may exercise; and so *held* as to a classification exempting farmers' mutual insurance companies doing only a farm business from the operation of an act regulating rates of insurance. *German Alliance Ins. Co.* v. *Kansas*, 389.

24. *Equal protection of the laws; reasonableness of classification.*
A legislative classification may rest on narrow distinctions. Legislation is addressed to evils as they appear and even degrees of evil may determine its exercise. (*Ozan Lumber Co.* v. *Union National Bank*, 207 U. S. 251.) *Ib.*

25. *Equal protection of the law; validity of Alabama railway double damage statute.*
A State may impose double damages and an attorney's fee on railway companies for failure to pay the owner of stock killed within a reasonable period after demand and award of the jury of the amount claimed before action commenced; and so *held* that the double damage statute of Arkansas is constitutional as applied to cases of this character. *Kansas City Southern Ry. Co.* v. *Anderson*, 325.

26. *Same.*
St. Louis, Iron Mtn. & Southern Ry. Co. v. *Wynne*, 224 U. S. 354, distinguished, as in that case this statute was declared unconstitutional only as applied to claims where the jury awarded less than the amount demanded. *Ib.*

27. *Equal protection of the laws; corelation of life, liberty and property.*
Life, liberty, property and equal protection of the laws as grouped together in the Constitution are so related that the deprivation of any one may lessen or extinguish the value of the others. *Smith* v. *Texas*, 630.

28. *Equal protection of the laws; effect to deny, of deprivation of right to labor.*
In so far as a man is deprived of the right to labor, his liberty is restricted, his capacity to earn wages and acquire property is lessened, and he is denied the protection which the law affords those who are permitted to work. *Ib.*

29. *Equal protection of the laws; effect to deny, of Texas statute prescribing qualifications of railroad conductors.*
The statute of Texas of 1909 prohibiting any person from acting as a

conductor on a railroad train without having for two years prior thereto worked as a brakeman or conductor of a freight train and prescribing no other qualifications, excludes the whole body of the public from the right to secure employment as conductors and amounts, as to persons competent to fill the position but who have not the specified qualification, to a denial of the equal protection of the law. *Ib.*

30. *Equal protection of the law; validity of state statute allowing attorneys' fees to successful plaintiffs.*

If the classification is otherwise reasonable, a state statute does not deny equal protection of the law because attorney's fees are allowed to successful plaintiffs only and not to successful defendants. The classification is reasonable. *Missouri, K. & T. Ry. Co.* v. *Cade*, 642.

31. *Equal protection of the law; validity of state statute allowing attorneys' fees to successful plaintiffs.*

The statute of Texas of 1909 imposing an attorney's fee on the defeated defendant in certain classes of cases, as the same has been construed by the highest court of that State, is not unconstitutional under the equal protection provision of the Fourteenth Amendment. *Gulf, Colorado & Santa Fe Ry. Co.* v. *Ellis*, 165 U. S. 150, distinguished. *Ib.*

See SUPRA, 14, 15, 16;
STATES, 2.

32. *Full faith and credit; extent of obligation as to statute creating transitory cause of action.*

While the courts of a State are bound to give full faith and credit to all substantial provisions of a statute of another State creating a transitory cause of action which inhere in the cause of action or which name conditions on which the right to sue depends, venue is no part of a right, and whether jurisdiction exists is to be determined by the law of the State creating the court in which the case is tried. *Tennessee Coal, I. & R. R. Co.* v. *George*, 354.

33. *Full faith and credit; effect of taking jurisdiction of transitory action limited by law creating it to courts of enacting State.*

A state court does not deny full faith and credit to a statute of another State by taking jurisdiction of a transitory cause of action created thereby, although such statute provides that the action can only be brought in the courts of the enacting State. (*Atchison &c. Ry.* v. *Sowers*, 213 U. S. 55.) *Ib.*

34. *Liberty defined.*
Liberty means more than freedom from servitude; and the constitutional guarantee is an assurance that the citizens shall be protected in the right to use his powers of mind and body in any lawful calling. *Smith* v. *Texas*, 630.

35. *States; laws of; requirement of Fourteenth Amendment.*
The Fourteenth Amendment does not require that state laws shall be perfect. *Missouri, K. & T. Ry. Co.* v. *Cade*, 642.

Generally.—*See* STATUTES, A 7.

CONSTRUCTION OF STATUTES.

See STATUTES A.

CONSTRUCTIVE NOTICE.

See PUBLIC LANDS, 8.

CONTEMPT OF COURT.

1. *Nature as offense.*
Contempts are none the less offenses because trial by jury does not extend to them as a matter of constitutional right. *Gompers* v. *United States*, 604.

2. *Limitations; application of § 1044, Rev. Stat.*
The provision in Rev. Stat., § 1044, that no person shall be prosecuted for an offense not capital unless the indictment is found or information instituted within three years after commission of the offense applies to acts of contempt not committed in the presence of the court. *Ib.*

3. *Limitations; application of § 1044, Rev. Stat.*
The substantive portion of § 1044, Rev. Stat., is that no person shall be tried for any offense not capital except within the specified time, and the reference to form of procedure by indictment or information does not take contempts out of the statute because the procedure is by other methods than indictment or information. *Ib.*

4. *Limitations; period of.*
As the power to punish for contempt has some limit, this court regards that limit to have been established as three years by the policy of the law, if not by statute, by analogy. (*Adams* v. *Wood*, 2 Cranch, 336.) *Ib.*

5. *Indictment for; quære as to.*
Quære, whether an indictment will lie for a contempt of a court of the United States. *Ib.*
See JURISDICTION, A 29.

CONTRACTS.

1. *Joint; notice to bind parties.*
Notice to either of joint contractors is notice to both. *Tevis* v. *Ryan*, 273.

2. *Inducement; admissibility of evidence as to fraud in.*
In this case, the cause of action being not on the contract alone, but also upon alleged fraudulent conduct, evidence as to oral declarations of the defendant was admissible to show the misrepresentations alleged as basis for the claim of fraudulent inducement to make the contract and fraudulent use of the property entrusted to the defendant thereunder. *Ib.*

3. *Liability under contract in regard to disposition of outstanding stock of corporation.*
Covenants in a contract between individuals who control a corporation, in regard to disposition of its outstanding stock, construed in this case to import a personal responsibility on the parties and not on the corporation. *Ib.*

4. *Construction; judicial power in.*
In determining rights thereunder, this court must be governed by the contract, and cannot first destroy it in part and then enforce that which remains. *Miller* v. *United States*, 1.

5. *Construction of contract providing for surrender and reinvestment of control of corporation.*
A contract, providing that in a specified contingency the interest of the parties surrendering control to the other party shall revest in them in the same proportion and ratio as they held on the making of the contract, was properly construed as contemplating that the surrendering parties be restored to the same proportionate interest in the property as they held prior to the making of the agreement. *Tevis* v. *Ryan*, 273.

6. *Government; construction of.*
A Government contract should be interpreted as are contracts between individuals and with a view of ascertaining the intention of the parties and to give it effect accordingly if that can be done consistently with its terms. *Hollerbach* v. *United States*, 165.

7. *Government; effect of representation by Government.*
A positive statement in a contract as to present conditions of the work must be taken as true and binding upon the Government, and loss resulting from a mistaken representation of an essential condition should fall upon it rather than on the contractor, even though there are provisions in other paragraphs of the contract requiring the contractor to make independent investigation of facts. *Ib.*

8. *Postal; discontinuance; authority conferred on United States.*
The postal contract involved in this action conferred authority on the United States to discontinue its performance and gave the Post Office authorities power after the discontinuance to deal with the mail routes which the contract previously embraced in such manner as was found necessary to subserve the public interest. *Miller* v. *United States*, 1.

9. *Postal; discontinuance; bad faith in; sufficiency of pleading as to.*
The averments of the bill did not show such a state of facts as would justify the conclusion that the action of the Post Office authorities in exerting the lawful power of discontinuance was so impelled by bad faith as to cause the exertion of the otherwise lawful power to be invalid and void. *Ib.*

10. *Postal; cancellation; difficulty of performance; presumption as to consideration of.*
The difficulties in performing a postal contract are presumably in the minds of the contracting parties, and the Government cannot be deprived of the protection of the reserved powers of cancellation in case of the failure of the contractor to perform by reason of such difficulties. *Ib.*

11. *Postal; relief against results of mistake in making.*
Where the hardships endured by a postal route contractor are the results of his own mistake in making an improvident contract, relief can only be obtained at the hands of Congress. *Ib.*

12. *Agreement for participation in profits construed; partnership under Porto Rican law.*
Although the contract for participation in profits involved in this case may not have created a partnership, as defined under § 1567, Civil Code of Porto Rico, it gave the party entitled to participate an equitable interest in the property involved which attached specifically to the profits when they came into being. *Barnes* v. *Alexander*, 232 U. S. 117. *Valdes* v. *Larrinaga*, 705.

13. *Agreement for participation in profits construed.*
In this case *held*, that notwithstanding the forfeiture of an original grant and the final sale relating to a new but similar grant, as there was a continuous pursuit of the end achieved, one who was entitled to a share in the profits of the enterprise as originally conceived was entitled to share in the proceeds. *Ib.*

14. *Relief to which party entitled; equity jurisdiction.*
In such a case, if the party having the legal control of the property and profits abuses the fiduciary relation created by the contract, equitable relief is proper. *Ib.*

15. *Public policy; validity under.*
In this case it does not appear that the contract under which one who had formerly occupied a government office in Porto Rico rendered services in connection with obtaining a franchise from the local and Federal governments was improper or against public policy. *Hazelton* v. *Sheckells*, 202 U. S. 71, distinguished. *Ib.*

See ACTIONS, 7, 8, 9;
CONSTITUTIONAL LAW, 3–10, 16, 18;
GRANTS, 4;
INDIANS, 10, 12;
INSURANCE, 2;
INTEREST;
INTERSTATE COMMERCE, 15;
PRACTICE AND PROCEDURE, 20, 21, 22.

CONVEYANCES.

See INDIANS;
LOCAL LAW (Porto Rico).

CORPORATIONS.

mendment and alteration of charter; effect of reservation of power; legislative and judicial functions.
The effect of the reservation of the power to amend and alter charters of corporations is to make a corporation, from the moment of its creation, subject to the legislative power in those respects as a corporate body; and questions of expediency are for the legislature and not for the courts so long as the amendments or alterations do not defeat or substantially impair the object of the grant or rights vested thereunder. *Erie R. R. Co.* v. *Williams*, 685.

See CONSTITUTIONAL LAW, 6, 10;
CONTRACTS, 3;
EVIDENCE, 2.

COURT AND JURY.

See NEGLIGENCE.

COURT OF CLAIMS.

See ACTIONS, 6.

COURT RECORDS.

See JUDICIAL NOTICE.

COURTS.

Interference with exercise of state powers; justification for.

Cost and inconvenience to the party affected must be very great in order to justify the courts in declaring void the action of the State in exercising its reserved power over charters or its police power. *Erie R. R. Co.* v. *Williams*, 685.

See ACTIONS, 3, 4;
ATTACHMENT AND GARNISHMENT, 2;
COMMON CARRIERS;
CONSTITUTIONAL LAW, 32;
CORPORATIONS;
IMMIGRATION, 2;
JUDICIAL POWERS;
JURISDICTION;
PUBLIC LANDS, 16;
STATUTES, A 2.

CRIMINAL LAW.

1. *Limitations; legislative or judicial determination.*

In dealing with the punishment of crime, some rule as to limitations should be laid down, if not by Congress by this court. *Gompers* v. *United States*, 604.

2. *Pardon by President; effect on power of State to punish for crime subsequently committed.*

The granting of a pardon by the President for a crime committed against the United States does not operate to restrict the power of a State to punish crimes thereafter committed against its authority and to prescribe such penalties as it deems appropriate in view of the nature of the offense and the character of the offender taking in view his past conduct; and so *held* that the second offense provisions of the Penal Code of New York are not unconstitutional as applied to a person convicted of the same crime of which he had been previously convicted by the United States and pardoned by the President. *Carlesi* v. *New York*, 51.

3. *Penalties; effect of consideration of former offense which has been pardoned.*

Taking into consideration the fact that a person convicted of a crime against the State had previously committed the same crime against the United States is not a punishment of the former crime and does not deprive the person convicted of any Federal rights under a pardon of the President of the United States of the first offense. *Ib.*

4. *Penalties; second offense statute; effect to impose additional punishment for first offense.*

McDonald v. *Massachusetts*, 180 U. S. 311, and *Graham* v. *West Virginia*, 224 U. S. 616, followed to the effect that the state statute involved in this case, and which imposed heavier penalties for second offenses, whether the first offense was committed in the same or in another jurisdiction, does not impose additional punishment for the first offense but only imposes a punishment on the crime for which the person convicted is tried. *Ib.*

5. *Penalties; power of State to consider prior offense as aggravation; quære as to.*

Quære, whether a State may not provide that the fact of the commission of an offense after a pardon of a prior offense by it or another sovereignty should be regarded as an increased element of aggravation to the second offense to be considered in adding to the punishment therefor. *Ib.*

See ACTIONS, 1, 2; CONTEMPT OF COURT; BRIBERY; JURISDICTION, A 27, 28; STATES, 3.

DAMAGES.

See CONSTITUTIONAL LAW, 19, 25; EMPLOYERS' LIABILITY ACT, 4; PENALTIES AND FORFEITURES, 1; RAILROADS, 1, 2, 3.

DEBTOR AND CREDITOR.

See ATTACHMENT AND GARNISHMENT; INTEREST.

DEEDS.

See LOCAL LAW (Porto Rico).

DEPARTMENTAL CONSTRUCTION.

See STATUTES, A 3, 4.

DEPARTMENTAL PROCEEDINGS.

See ACTIONS, 1; IMMIGRATION, 2.

DEPARTMENTAL REGULATIONS.

See BRIBERY, 3; MAILS, 1.

DEPORTATION.

See IMMIGRATION.

DOUBLE JEOPARDY.

See CRIMINAL LAW, 2.

DUE PROCESS OF LAW.

See ATTACHMENT AND GARNISHMENT, 4;
CONSTITUTIONAL LAW, 11–18;
JURISDICTION, A 13, 14.

EMINENT DOMAIN.

1. *English rule; power of Parliament to authorize taking of private property without compensation.*

Although in England, Parliament, being omnipotent, may authorize the taking of private property for public use without compensation, the English courts decline to place an unjust construction on its acts, and, unless so clear as not to admit any other meaning, do not interpret them as interfering with rights of private property. *Richards* v. *Washington Terminal Co.*, 546.

2. *American and English rule differentiated.*

Legislation of Congress is different from that of Parliament as it must be construed in the light of that provision of the Fifth Amendment which forbids the taking of private property for public use without compensation. *Ib.*

3. *Taking of property; private nuisance as; power of Congress to confer immunity from suit for.*

While Congress may legalize, within the sphere of its jurisdiction, what otherwise would be a public nuisance, it may not confer immunity from action for a private nuisance of such a character as to amount in effect to a taking of private property for public use. *Ib.*

See RAILROADS, 9, 10.

EMPLOYER AND EMPLOYÉ.

See CONGRESS, POWERS OF, 2;
EMPLOYERS' LIABILITY ACT;
MASTER AND SERVANT.

EMPLOYERS' LIABILITY ACT.

1. *Paramountcy; effect to supersede state laws.*

Since Congress, by the Employers' Liability Act of 1908, took control

of the liability of carriers engaged in interstate transportation by rail to employés injured while engaged in interstate commerce, all state laws upon the subject have been superseded. (*Second Employers' Liability Cases*, 223 U. S. 1, 55.) *Seaboard Air Line* v. *Horton*, 492.

2. *Basis for action under; negligence as.*

Whatever may have been the common law rule theretofore, Congress, in enacting the Employers' Liability Act, intended to, and did, base the action on negligence only and excluded responsibility of the carrier to its employés for defects and insufficiencies not attributable to negligence. *Ib.*

3. *Application in action for negligence, although not referred to in pleadings or pressed at trial.*

The operation and effect of the Employers' Liability Act upon the rights of the parties is involved in an action for negligence where the complaint alleges and the proof establishes that the employé was engaged in, and the injury occurred in the course of, interstate commerce even though the act was not referred to in the pleadings or pressed at the trial. (*Seaboard Air Line* v. *Duvall*, 225 U. S. 477.) *Grand Trunk Western Ry. Co.* v. *Lindsay*, 42.

4. *Contributory negligence under; effect on recovery where injury occasioned by violation of Safety Appliance Acts.*

Although § 3 of the Employers' Liability Act establishes a system of comparative negligence, and diminution of damages by reason of the employé's contributory negligence, the proviso to that section expressly provides that contributory negligence does not operate to diminish the recovery if the injury has been occasioned in part by the failure of the carrier to comply with Safety Appliance Acts. *Ib.*

5. *Liability of employer for defective appliances.*

Under the Employers' Liability Act a defect in an appliance which is not covered by any of the Federal Safety Acts does not leave the employer absolutely responsible for the defect, but the common law rule as to assumption of risk applies; and so *held* as to a defect in a water gauge of which the engineer had knowledge before the accident resulting therefrom. *Seaboard Air Line* v. *Horton*, 492.

6. *Liability; contributory negligence; effect of violation of statute; statutes contemplated.*

The provision diminishing liability of the carrier in case of contributory negligence on the part of the injured employé except where there

has been a violation by the carrier of any statute enacted for the safety of employés, relates to Federal statutes only and not to state statutes. *Ib.*

7. *Liability imposed by.*

Notwithstanding its wider powers, Congress, in enacting the Federal Employers' Liability Act of 1908, has confined the liability imposed by that act to injuries occurring to employés when the particular service in which they are employed at the time of injury is a part of interstate commerce. (*Pedersen* v. *Del., Lac. & West. R. R. Co.*, 229 U. S. 146.) *Illinois Central R. R. Co.* v. *Behrens*, 473.

8. *Injuries within; what constitutes interstate commerce.*

An employé of a carrier in interstate commerce by railroad who is engaged on a switch engine in moving several cars all loaded with intrastate freight from one point in a city to another point in the same city is not engaged in interstate commerce and an injury then sustained is not within the Employers' Liability Act of 1908. *Ib.*

9. *Defenses under; assumption of risk as.*

The Employers' Liability Act having expressly eliminated the defense of assumption of risk in certain specified cases, the intent of Congress is plain that in all other cases such assumption shall have its former effect as a bar to an action by the injured employé. *Seaboard Air Line* v. *Horton*, 492.

10. *Who entitled to maintain action under.*

The fact that an employé engaged in intrastate service expects, upon completion of that task, to engage in another which is a part of interstate commerce, is immaterial under the Employers' Liability Act of 1908 and will not bring the action under that act. *Illinois Central R. R. Co.* v. *Behrens*, 473.

11. *Effect on relation of master and servant; instruction as to; effect of confusion of assumption of risk and contributory negligence.*

Although the trial court in replying to counsel may have followed counsel in erroneously referring to assumption of risk instead of contributory negligence and negligence of fellow-servants, if assumption of risk was not involved in the action or referred to in the testimony, the error, if any, was not prejudicial. *Southern Ry. Co.* v. *Gadd*, 572.

EQUAL PROTECTION OF THE LAW.

See CONSTITUTIONAL LAW, 14–16, 19–31;
STATES, 2.

EQUITY.

See CONTRACTS, 14;
TRESPASS, 1, 3, 4.

ESTOPPEL.

See INDIANS, 4;
PRACTICE AND PROCEDURE, 31;
TAXES AND TAXATION, 3.

EVIDENCE.

1. *Admissibility of paper writing as demand; effect of incorporation of other matter.*

A written paper offered and admitted as evidence of a demand and not objected to as coming too late is not inadmissible because it contains other matter. The proper course for the party objecting is to ask an instruction limiting the effect of the paper to the demand or else to base the objection on its coming too late. *Tevis* v. *Ryan*, 273.

2. *Secondary; admissibility.*

While the record of proceedings of a board of directors, when made, is the best evidence, if it is found that no record was made, the admission of secondary evidence is not reversible error. (*Bank of the United States* v. *Dandridge*, 12 Wheat. 64.) *Denver & Rio Grande R. R.* v. *Arizona & Colorado R. R.*, 601.

3. *Burden of proof on one attacking constitutionality of police regulation.*

The burden of the party attacking a police regulation as unconstitutional under the due process clause is not sustained by the mere principle of liberty of contract; it can only be sustained by showing that the statute conflicts with some constitutional restraint or does not subserve the public welfare. *Erie R. R. Co.* v. *Williams*, 685.

4. *Weight; sufficiency of instructions as to.*

It does not appear that any reversible error was committed by the court below concerning instructions asked and refused in regard to testimony of a car inspector and the weight attributable thereto. *Grand Trunk Western Ry. Co.* v. *Lindsay*, 42.

See CONTRACTS, 2;
PUBLIC LANDS 9, 11, 12, 13, 14, 19;
TRADE-MARKS, 5.

EXECUTIVE DEPARTMENTS.

Indian Office; powers and duties of.

The office of Commissioner of Indian Affairs was established to create

an administrative agency with adequate powers to execute the policy of the Government towards the Indians, and one of the important duties of the Indian Office is the enforcement of liquor prohibition. *United States* v. *Birdsall*, 223.

See STATUTES, A 3, 4.

FACTS.

See PRACTICE AND PROCEDURE, 3, 7.

FEDERAL QUESTION.

Involution of constitutional question; sufficiency.

Every objection to the admission of a statement or confession of the accused cannot be regarded as involving the construction of the Constitution merely because that instrument was referred to when in substance and effect there was no controversy concerning the Constitution but only a contention as to the method of procedure. *Apapas* v. *United States*, 587.

See JURISDICTION.

FIFTH AMENDMENT.

See CONSTITUTIONAL LAW, 13;
EMINENT DOMAIN, 2.

FINDINGS OF FACT.

See PRACTICE AND PROCEDURE, 3, 7.

FOREIGN CORPORATIONS.

See CONSTITUTIONAL LAW, 1;
TAXES AND TAXATION, 2.

FOREIGN SERVICE.

See ARMY AND NAVY.

FOREIGN VESSELS.

See ADMIRALTY, 4, 6, 7, 8.

FOURTEENTH AMENDMENT.

See CONSTITUTIONAL LAW;
JURISDICTION, A 13, 14.

FRANCHISES.

See GRANTS, 3.

FRAUD.

See CONTRACTS, 2;
PUBLIC LANDS, 8, 12–17.

FRIVOLOUS APPEALS.

See APPEAL AND ERROR, 4.

FULL FAITH AND CREDIT.

See CONSTITUTIONAL LAW, 32, 33.

GENERAL LAND OFFICE.

See PUBLIC LANDS, 16.

GOVERNMENTAL POWERS.

1. *Legislative and judicial powers in determining whether public welfare subserved by statute.*

Whether a statute imposes an unjust burden depends upon its validity; and whether the public welfare is subserved thereby is, in the first instance, to be determined by the legislature, whose action the courts will not review unless unmistakably and palpably in excess of legislative power. (*McLean* v. *Arkansas*, 211 U. S. 539.) *Erie R. R. Co.* v. *Williams*, 685.

2. *Legislative power in respect of payment of wages of employés.*

In determining time and manner of payment of wages of employés the legislature can consider the fact that to those who work for a living there is an advantage in the ready purchasing power of cash over deferred payments involving the use of credit. *Ib.*

3. *Legislative and judicial; functions as respects general welfare.*

What makes for the general welfare is matter of legislative judgment, and judicial review is limited to power and excludes policy. *German Alliance Ins. Co.* v. *Kansas*, 389.

4. *Legislative and judicial, in respect of regulation of businesses affected by a public use.*

Whether rate regulation is necessary in regard to a particular business affected by a public use, such as insurance, is matter for legislative judgment. This court can only determine whether the legislature has the power to enact it. *Ib.*

5. *Inactivity; effect on legality when exercised.*

The inactivity of a governmental power, no matter how prolonged, does

not militate against its legality when exercised. (*United States* v. *Delaware & Hudson Co.*, 213 U. S. 366.) *Ib.*

6. *Basis for legislation.*

A general conception of the law-making bodies of the country that a business requires governmental regulation is not accidental and cannot exist without cause. *Ib.*

See CORPORATIONS;
POLICE POWER;
UNITED STATES.

GOVERNMENTAL REGULATION.

See INSURANCE.

GOVERNMENT CONTRACTS.

See ACTIONS, 7, 8, 9;
CONTRACTS, 6, 7.

GRANTS.

1. *Public; rule as to construction in favor of public; scope of.*

The rule that public grants are to be construed strictly in favor of the public, and ambiguities are to be resolved against the grantee, is a salutary one to frustrate efforts through skilful wording of the grant by interested parties; but the rule does not deny to public offers a fair and reasonable interpretation or justify withholding that which the grant was intended to convey. *Russell* v. *Sebastian*, 195.

2. *Public utility grant; breadth of.*

An offer of the State to allow parties, ready to serve municipalities with gas or water, provisions for conveying the gas or water, is to be given a practical common-sense construction; and the breadth of the offer is commensurate with the requirements of undertaking invited. *Ib.*

3. *Public; power of State to determine policy of making.*

Where the constitution of the State does not forbid, the State may determine the policy of making direct grants for franchises in municipalities and may determine their terms and scope. *Ib.*

4. *Public; acceptance; scope of; power to withdraw.*

A grant to lay pipes and conduits in the streets of a municipality, dependent only upon acceptance, is not to be regarded as accepted foot by foot as pipes are laid, but in an entirety for all the streets of

the municipality; and after acceptance and preparation for compliance with the offer the grant cannot be withdrawn as to the streets in which pipes have not been laid. Such action would impair the contract. *Ib.*

See CONSTITUTIONAL LAW, 5, 6.

GUARANTY.

See INDIANS, 9, 10.

GUARDIANSHIP.

See INDIANS, 11.

HABEAS CORPUS.

See IMMIGRATION, 6.

HEPBURN ACT.

See INTERSTATE COMMERCE, 29. 30.

HOURS OF SERVICE ACT.

See INTERSTATE COMMERCE, 17, 18.

HUSBAND AND WIFE.

See LOCAL LAW (Porto Rico).

IMMIGRATION.

1. *Deportation; running of three year period where more than one entry.*

Where an alien enters this country more than once, the period of three years from entry prescribed by §§ 20 and 21 of the Alien Immigration Law runs not from the date when he first entered the country, but from the time of his entry under conditions within the prohibitions of the act. (*Lapina* v. *Williams*, 232 U. S. 78.) *Lewis* v. *Frick*, 291.

2. *Deportation; decision of Secretary of Commerce and Labor; controlling effect of.*

Where, as in this case, there was evidence sufficient to justify the Secretary of Commerce and Labor in concluding that the alien was within the prohibitions of the Alien Immigration Act, and the hearing was fairly conducted, the decision of the Secretary is binding upon the courts. *Ib.*

3. *Deportation; offense under § 2 of act of 1907 as amended.*

Under § 2 of the Alien Immigration Act of 1907 as amended in 1910, it is an offense for any person, citizen or alien, to bring into this

country an alien for the purposes of prostitution, and any alien so doing or attempting to do may be excluded on entry or deported after entry. *Ib.*

4. *Deportation for offense under § 2 of act of 1907; effect of acquittal as res judicata as to proceeding before Secretary of Commerce and Labor.*
A conviction under § 3 of the Alien Immigration Act is not necessary for exclusion on entry or deportation after entry of an alien who has brought into this country an alien for the purpose of prostitution, nor is a verdict of acquittal of a charge under § 3 *res judicata* as to a proceeding before the Secretary under § 2 of the act. *Ib.*

5. *Deportation; destination.*
The destination of an alien whose deportation after a second entry is based on § 2 of the Alien Immigration Act is to be determined in the light of §§ 20, 21 and 35 of the act and is not controlled by the factitious circumstance of his going to a contiguous country to obtain the alien brought in for purposes of prostitution. The act admits of his being returned to the country whence he came when he first entered the United States. *Ib.*

6. *Deportation; destination; discretion of Secretary; quære as to.*
Quære, whether the act leaves any room for discretion on the part of the Secretary; and whether that part of a deportation order determining destination of the alien is open to inquiry on *habeas corpus*. *Ib.*

IMPAIRMENT OF CONTRACT OBLIGATION.

See CONSTITUTIONAL LAW, 5–10, 18;
GRANTS, 4;
PRACTICE AND PROCEDURE, 20, 21.

INDIAN OFFICE.

See BRIBERY, 3, 4.

INDIANS.

1. *Alienation of future allotments; effect of act of April 21, 1904.*
The act of April 21, 1904, c. 1402, 33 Stat. 189, 204, removing restrictions on alienation of lands of non-Indian allottees of the Five Civilized Tribes, did not authorize members of the tribes to sell future acquired property. *Franklin* v. *Lynch*, 269.

2. *Alienation of future allotments; individual interest in tribal lands.*
Under Rev. Stat., § 2116, no conveyance of an Indian tribe shall be

valid except as authorized by treaty, and individual members cannot sell future allotments, as, prior to allotment, there is no individual interest in tribal lands or vendible interest in any particular tract. (*Gritts* v. *Fisher*, 224 U. S. 640.) *Ib.*

3. *Alienation of future allotments; effect of act of April 21, 1904.*
While the act of April 21, 1904, removed some restrictions, it did not permit either members of the tribes or non-Indians to sell mere floats of expectancy. *Ib.*

4. *Alienation of land by one admitted to membership in tribe by intermarriage; estoppel.*
One who has applied for and been admitted to membership in an Indian tribe by intermarriage cannot thereafter claim the rights of an Indian as to receiving allotment and the rights of a white non-Indian as to alienation; and all parties dealing with such a person do so with knowledge of the restrictions on alienation imposed by the act of 1902. *Ib.*

5. *Alienation of allotment before patent; effect of local law inconsistent with act of Congress.*
As § 642 of Mansfield's Digest, providing that title to subsequently acquired property conveyed shall inure to the benefit of the grantee, was only extended to Indian Territory so far as applicable and not inconsistent with any law of Congress; it has no effect on titles to allotments which, under the act of 1902, cannot be affected by conveyance before patent. *Ib.*

6. *Allotments; sales of; right of action by United States to set aside.*
The United States has capacity to sue for the purpose of setting aside conveyances of lands allotted to Indians under its care where restrictions upon alienation have been transgressed. (*Heckman* v. *United States*, 224 U. S. 413.) *Bowling* v. *United States*, 528.

7. *Allotments; transfer of; interest of United States.*
A transfer of allotted lands contrary to the inhibition of Congress is a violation of governmental rights of the United States arising from its obligation to a dependent people, and no stipulations, contracts or judgments in suits to which the United States is a stranger can affect its interest. *Ib.*

8. *Allotments; restrictions on alienation; operation of.*
Restrictions on alienation imposed by acts of Congress such as that of March 2, 1889, regarding the allotments to the confederated

tribes specified therein, are not mere personal restrictions operative upon the allottee alone, but run with the land and are binding upon his heirs as well for the specified term. *Ib.*

9. *Claims against; enforcement under act of May 29, 1908.*
A claim for lumber equipment furnished to individual members of a tribe of Indians on the guarantee of the Tribe based on an agreement that the proceeds of the lumber cut should, to the extent permitted by the Government, pass through the hands of an agent and be applied to payment for the equipment cannot be enforced, under the act of May 29, 1908, against the Tribe or the Indians as members thereof or the United States when it appears that such proceeds of the lumber were collected by the agent and misapplied. *Green* v. *Menominee Tribe*, 558.

10. *Contracts of guaranty by tribe; law governing.*
A contract by a tribe of Indians to guarantee payment of supplies to individual members thereof must conform to § 2103, Rev. Stat. *Ib.*

11. *Guardianship over allottees; effect of citizenship.*
The guardianship of the United States over allottee Indians does not cease upon the making of the allotment and the allottee becoming a citizen of the United States. (*Tiger* v. *Western Investment Co.*, 221 U. S. 286.) *Bowling* v. *United States*, 528.

12. *Traders; licensees; right to contract with Indians.*
The right of a licensed Indian trader to deal with Indian tribes and individual Indians does not extend to making unlawful contracts. *Green* v. *Menominee Tribe*, 558.

See ACTIONS, 6;
EXECUTIVE DEPARTMENTS;
JURISDICTION, E;
STATUTES, A 1.

INDICTMENT AND INFORMATION.

See CONTEMPT OF COURT, 2, 5;
MAILS, 3.

INFRINGEMENT OF TRADE-MARK.

See TRADE-MARKS, 3-6.

INHERITANCE TAX.

See CONSTITUTIONAL LAW, 17.

INJUNCTION.

See TRADE-MARKS, 6;
TRESPASS, 1, 3, 4.

INSTRUCTIONS TO JURY.

1. *Duplication and emphasis of immaterial point properly refused.*

It is not error for the court to refuse to affirm a particular and immaterial point in regard to the alleged negligence of the defendant when it would only serve to possibly confuse the jury and the point has already been covered by the charge. *Myers* v. *Pittsburgh Coal Co.*, 184.

2. *Isolated phrases in; effect as reversible error.*

An isolated phrase in the charge in a case involving the fall of an engine, which did not amount to *res ipsa loquitur*, but was to the effect that proof of a defect in the appliances that the master was bound to use care to keep in order and which usually would be in order if due care was taken was *prima facie* evidence of neglect, *held*, in this case, not to be reversible error, no attention having been called to the expression at the time. *Southern Ry. Co.* v. *Bennett*, 80.

See APPEAL AND ERROR, 2;
MASTER AND SERVANT, 5.

INSURANCE.

1. *Public interest in; regulation of rates.*

The business of insurance is so far affected with a public interest as to justify legislative regulation of its rates. *German Alliance Ins. Co.* v. *Kansas*, 389.

2. *Public interest in; power of state legislature to regulate contracts of.*

A public interest can exist in a business, such as insurance, distinct from a public use of property, and can be the basis of the power of the legislature to regulate the personal contracts involved in such business. *Ib.*

3. *Public interest in; fundamental thing.*

Where a business, such as insurance, is affected by a public use, it is the business that is the fundamental thing; property is but the instrument of such business. *Ib.*

4. *Public interest in; governmental regulation of.*

Munn v. *Illinois*, 94 U. S. 113; *Budd* v. *New York*, 143 U. S. 517; *Brass* v. *North Dakota*, 153 U. S. 391, demonstrate that a business

by circumstances and its nature may rise from private to public concern and consequently become subject to governmental regulation; and the business of insurance falls within this principle. *Ib.*

5. *Governmental regulation of.*

The fact that a contract for insurance is one for indemnity and is personal, does not preclude regulation. *Ib.*

See CONSTITUTIONAL LAW, 3, 16, 23;
GOVERNMENTAL POWERS, 4.

INTEREST.

1. *Accrual on contracts to pay money.*

Whatever may have been the English and early American rule, the present tendency in this country is to allow interest on contracts to pay money from the date the debt becomes due; and so *held* as to goods sold in Virginia on a credit of thirty days. *American Iron & Steel Co.* v. *Seaboard Air Line Ry.*, 261.

2. *Accrual where goods sold on credit of specified period.*

The acceptance of goods sold on a credit of a specified number of days is equivalent to a promise to pay the money on that day, *Atlantic Phosphate Co.* v. *Grafflin*, 114 U. S. 492, and interest accrues as an incident of the debt and not merely as damages. *Ib.*

3. *Accrual on debt for goods sold on specified credit; effect of receiver's possession of goods.*

On the facts certified in this case, *held* that interest was recoverable on a debt for goods sold on a thirty day credit at the legal rate of interest from the expiration of the credit until payment, including the period that the assets of the debtor were in the hands of a receiver in a suit to foreclose a mortgage. *Ib.*

4. *Disallowance after property in custodia legis; basis of rule.*

The general rule that interest is not allowed after property of the insolvent is in *custodia legis*, is not based on loss of interest-bearing quality, but is a necessary and enforced rule incident to equality of distribution between creditors of assets which, in most cases, are insufficient to pay all debts in full. *Ib.*

INTERSTATE COMMERCE.

1. *What constitutes; effect of action of parties to transaction.*

Parties may not by the form of a non essential contract convert an exclusively local business subject to state control into an inter-

state commerce business protected by the commerce clause so as to remove it from the taxing power of the State. *Browning* v. *Waycross*, 16.

2. *What constitutes; continuance of character of transaction as; quære.*
Quære, whether interstate commerce might not under some conditions continue to apply to an article shipped from one State to another after delivery and up to and including the time when the article is put together and made operative in the place of destination. *Ib.*

3. *What constitutes; freedom from state taxation.*
Where orders are taken in one State for goods to be supplied from another State, which orders are transmitted to the latter State for acceptance or rejection, and filled from stock in that State, the business is interstate commerce and not subject to a state license tax. (*Crenshaw* v. *Alabama*, 227 U. S. 389.) *Singer Sewing Machine Co.* v. *Brickell*, 304.

4. *What constitutes; effect of separating rates.*
Although there may be no established through-rate or through-route between points in different States, the interstate character of the shipment cannot be destroyed by separating the rates into component parts and issuing local way-bills. *Baer Bros.* v. *Denver & R. G. R. R. Co.*, 479.

5. *Subjects of; business of erecting lightning rods coming from another State.*
The business of erecting in one State lightning rods shipped from another State, under the circumstances of this case, was within the regulating power of the former State and not the subject of interstate commerce. *Caldwell* v. *North Carolina*, 187 U. S. 622; *Rearick* v. *Pennsylvania*, 203 U. S. 507; *Dozier* v. *Alabama*, 218 U. S. 124, distinguished; *Browning* v. *Waycross*, 16.

6. *Character of commerce; determination.*
Whether commerce is interstate or intrastate must be determined by the essential character of the commerce and not by mere billing or forms of contract. *Chicago, M. & St. P. Ry. Co.* v. *Iowa*, 334.

7. *Character of commerce; reshipment of interstate shipment.*
The reshipment of an interstate shipment by the consignees in the cars in which received to other points of destination does not necessarily establish a continuity of movement or prevent the shipment to a point within the same State from having an independent and intrastate character. *Ib.*

8. *Character of commerce as intrastate.*
In this case, *held*, that shipments of coal when reshipped, after arrival from points without the State and acceptance by the consignees, to points within the State on new and regular billing forms constituted intrastate shipments and were subject to the jurisdiction of the State Railroad Commission. *Ib.*

9. *Federal power; jurisdiction of Congress; power of State to displace or share; quære as to.*
Quære, and not decided in this case, whether it is competent for a State, through its power to alter or repeal charters of railroads incorporated under its laws, so as to displace or share the jurisdiction of Congress over interstate commerce. *Erie R. R. Co.* v. *New York*, 671.

10. *Federal legislation; paramountcy of; conflict of laws.*
When Congress acts in such manner as to manifest its constitutional authority in regard to interstate commerce the regulating power of the State ceases to exist, and if there is conflict between State and Federal legislation the former must give way. *Ib.*

11. *Carmack Amendment; exclusiveness of Federal jurisdiction.*
The effect of the Carmack Amendment was to give to Federal jurisdiction control over interstate commerce and to make Federal legislation regulating liability for property transported by common carriers in interstate commerce exclusive. *Atchison, T. & S. F. Ry. Co.* v. *Robinson*, 173; *Atchison, T. & S. F. Ry. Co.* v. *Moore*, 182.

12. *Rate schedules; scope of.*
Under § 6 of the Interstate Commerce Act carriers must include in the schedules of rates filed regulations affecting passengers' baggage and the limitations of liability. *Boston & Maine R. R.* v. *Hooker*, 97.

13. *Rates; reasonableness; determination of.*
Where charges for full liability as specified in the published tariff are unreasonable, they can only be attacked before the Interstate Commerce Commission. *Ib.*

14. *Rates; conclusiveness of filed tariffs; notice of.*
The shipper, as well as the carrier, is bound to take notice of the filed tariff rates, and so long as they remain operative they are, in the absence of attempts at rebating or false billing, conclusive as to

the rights of the parties. (*Great Northern Ry.* v. *O'Connor*, 232 U. S. 508.) *Atchison, T. & S. F. Ry. Co.* v. *Robinson*, 173; *Atchison, T. & S. F. Ry. Co.* v. *Moore*, 182.

15. *Rates; filed schedules; effect of oral agreement contrary to.*

An oral agreement cannot be given a prevailing effect which will be contrary to the filed schedules. To do so would open the door to special contracts and defeat the primary purpose of the Interstate Commerce Act to require equal treatment of all shippers and the charging to all of but one rate, and that the rate filed as required by the act. *Ib.*

16. *Rates; valuation as basis; presumption of knowledge.*

Knowledge of the shipper that the rate is based on value is to be presumed from the terms of the bill of lading and of the published schedules filed with the Interstate Commerce Commission, and the effect of so filing the schedules makes the published rates binding upon shipper and carrier alike. *Boston & Maine R. R.* v. *Hooker*, 97.

17. *Hours of service of employés; exclusive operation of Federal statute of 1907.*

Regulation of the railroads is not a mere wanton exercise of power, but a restriction upon their management induced by public interest and safety; and so *held*, that the Hours of Service Act of 1907 is the judgment of Congress of the necessary extent of such restrictions as to employés engaged in interstate commerce which admits of no supplementary regulation by any of the States. *Erie R. R. Co.* v. *New York*, 671.

18. *Hours of service of employés; exclusive operation of Federal statute of 1907; invalidity of state statute dealing with subject.*

Provisions in the Labor Law of New York of 1907 relating to the hours of service of railroad telegraph operators engaged in interstate commerce are void in so far as they attempt to regulate interstate commerce, as Congress had completely covered the field by the Hours of Service Act of 1907, although that act did not take effect until March, 1908. (*Northern Pacific Railway Co.* v. *Washington*, 222 U. S. 370.) *Ib.*

19. *Baggage checks; regulatory power of Commission.*

If the subject needs regulation it is within the power of the Interstate Commerce Commission, under §§ 1 and 15 of the act of June 18, 1910, to make requirements as to checks or receipts to be given

for baggage by common carriers. *Boston & Maine R. R.* v. *Hooker*, 97.

20. *Bills of lading; passenger baggage check as.*
Congress is familiar with the customs of travelers including that of checking baggage; and so *held* that a baggage check is sufficient compliance as to passengers' baggage with the provision in the Carmack amendment for issuing a receipt or bill of lading for the shipment. *Ib*

21. *Wages of employés; inaction of Congress.*
Congress has not, as yet, acted in regard to the time and manner of payment of wages of employés of interstate carriers. *Erie R. R. Co.* v *Williams*, 685.

22. *State burdens on; extent of prohibition against.*
A State may not burden, by taxation or otherwise, the taking of orders in one State for goods to be shipped from another, or the shipment of such goods in the channel of interstate commerce up to and including the consummation by delivery of the goods at the point of destination. *Browning* v. *Waycross*, 16.

23. *State interference; effect of order for removal of bridge.*
An out and out order of a state court to remove a bridge that is a necessary part of a line of interstate commerce is an interference with such commerce and with a matter that is under the exclusive control of Congress. *Kansas City Southern Ry. Co.* v. *Kaw Valley District*, 75.

24. *State interference; freedom from; extent of.*
Interstate commerce is not a matter that is left to the control of the States until further action by Congress; nor is the freedom of that commerce from interference by the States confined to laws only; it extends to interference by any ultimate organ. *Ib.*

25. *State interference; when not justified by police power.*
A direct interference by the State with interstate commerce cannot be justified by the police power; and so *held* that the destruction of a bridge across which an interstate railroad line necessarily passes cannot be justified by the fact that it helps the drainage of a district. *Ib.*

26. *State interference; when Federal court not justified in acting at instance of carrier.*
This court cannot, at the instance of the carrier, hold an order of the

State Railroad Commission, otherwise valid, requiring the carrier to forward interstate shipments after receipt to intrastate points in the same equipment, void as interfering with interstate commerce because the cars are vehicles of interstate commerce, when no actual interference with such commerce is shown nor is any such question raised between the shippers and the owners of the cars. *Chicago, M. & St. P. Ry. Co.* v. *Iowa*, 334.

27. *State burden on; what constitutes; regulation of payment of wages.*
A state statute regulating periods of payment of wages of railroad employés which is limited to the employés wholly within that State or whose duties take them from that State to other States and which is not applicable to those employed in other States, is not a direct burden on interstate commerce. *Erie R. R. Co.* v. *Williams*, 685.

28. *State interference; exercise of police power; when permissible.*
Where Congress has not acted on the subject, and there is no prohibition on interstate commerce, a State may regulate matters within its police power although incidentally affecting interstate commerce. *Ib.*

29. *State control over; effect of Hepburn Act and Carmack amendment.*
Congress, by the Hepburn Act and the Carmack amendment in 1906, has regulated the subject of interstate transportation of property by Federal law to the exclusion of the States to control it by their own policy or legislation. *Pennsylvania* v. *Hughes*, 191 U. S. 477, distinguished, having been decided prior to the passage of the Hepburn Act. *Boston & Maine R. R.* v. *Hooker*, 97.

30. *Limitation of liability as to passengers' baggage; effect of Federal legislation.*
The limitation of liability of carriers for passengers' baggage is covered by the Interstate Commerce Act and the Carmack amendment to the Hepburn Act applies thereto as well as to liability for shipments of freight. *Ib.*

31. *Limitation of liability as to passengers' baggage; sufficiency of notice to shipper.*
A provision in a tariff schedule that the passenger must declare the value of his baggage and pay stated excess charges for excess liability over the stated value to be carried free, is a regulation within the meaning of §§ 6 and 22 of the Interstate Commerce Act and as such is sufficient to give the shipper notice of the limitation. *Ib.*

32. *Limitation of liability as to passengers' baggage; effect of permitting, on common law rule as to carrier's liability for negligence.*

The effect of permitting the carrier to file regulations as to passengers' baggage which limit its liability except on payment of specified rates is not to change the common law rule that the carrier is an insurer against its own negligence but simply that the carrier shall obtain commensurate compensation for the responsibility assumed. *Ib.*

33. *Reparation; validity of order of Commission; effect of failure to fix rate for future.*

Awarding reparation for excessive charges in the past and regulating rates for the future involve the determination of matters essentially different; while they may be dealt with in one order by the Interstate Commerce Commission, an order for reparation is not void because it does not fix the rate for the future. *Baer Bros.* v. *Denver & R. G. R. R. Co.*, 479.

34. *Reparation order and order fixing new rate for future differentiated.*

An order of reparation is made by the Interstate Commerce Commission in its *quasi*-judicial capacity to measure past injuries to a private shipper, while an order fixing a new rate for the future is made in its *quasi*-legislative capacity to prevent future injury to the public. *Ib.*

35. *Reparation; validity of order of Commission; effect of invalidation of future rate.*

An order for reparation for excessive rates in the past is not void because the order invalidates the excessive rate condemned for the future. Even though it might be desirable to deal with the entire matter at the time the joinder of the two subjects is not jurisdictional. *Ib.*

36. *Reparation; jurisdiction of Commission; effect of failure of carrier to file tariffs.*

A failure on the part of one of the carriers of a through interstate shipment to file tariffs cannot defeat the jurisdiction of the Interstate Commerce Commission to award reparation against that carrier for an unreasonable rate over its part of the haul because that part is wholly intrastate. *Ib.*

37. *Reparation; jurisdiction of Commission; effect of voluntary dismissal of suit to recover unreasonable rates.*

The voluntary dismissal of a suit for recovery of unreasonable rates is

not a bar to a proceeding before the Interstate Commission for a reparation order. A voluntary dismissal is in the nature of a nonsuit and does not operate as a judgment on the merits. *Ib.*

38. *Commission; jurisdiction to consider reasonableness of charge on local way-bills.*

Where the shipment was actually interstate the Interstate Commerce Commission has jurisdiction to consider whether part of the rate which was charged on a local way-bill between two points in the same State is excessive. *Ib.*

See CONGRESS, POWERS OF, 2;
CONSTITUTIONAL LAW, 1, 2, 14, 18, 22;
EMPLOYERS' LIABILITY ACT.

INTERSTATE COMMERCE COMMISSION.

See INTERSTATE COMMERCE.

INTERVENTION.

See ACTIONS, 8.

INTOXICATING LIQUORS.

See BRIBERY, 4;
EXECUTIVE DEPARTMENTS.

JUDGMENTS AND DECREES.

Scope of decision; effect of expression of personal opinion of judge.

Where the state court did not decide that a general law amounted to a repeal or alteration of the charter of a corporation, the contention that it did so decide cannot be founded on an expression of personal opinion to that effect of the judge writing the opinion. *Erie R. R. Co.* v. *New York*, 671.

See JURISDICTION, A 15, 16;
PRACTICE AND PROCEDURE, 2
PUBLIC LANDS, 3, 6.

JUDICIAL CODE.

See JURISDICTION, A.

JUDICIAL NOTICE.

Of court records.

This court takes judicial notice of its own records; and, if not *res judicata*, may, on the principles of *stare decisis*, examine and consider decisions in former cases affecting the consideration of one

under advisement, *Bienville Water Supply Co.* v. *Mobile*, 186 U. S. 212. It may take judicial notice of its own records in regard to proceedings formerly had by a party to a proceeding before it. (*Dimmick* v. *Tompkins*, 194 U. S. 194.) *De Bearn* v. *Safe Deposit Co.*, 24.

JUDICIAL POWER.

See COURTS;
GOVERNMENTAL POWERS.

JURISDICTION.

A. OF THIS COURT.

1. *Direct review of capital cases; effect of § 134, Judicial Code.*

Judicial Code, § 134, governing the right to review cases in the District of Alaska, changed the general rule of the prior law by taking capital cases out of the class which could come to this court directly because they were capital cases and by bringing such cases within the final reviewing power of the Circuit Court of Appeals of the Ninth Circuit. *Itow* v. *United States*, 581.

2. *Direct review under §§ 134, 247, Judicial Code; effect of limitation on power to review on certificate from Circuit Court of Appeals or by certiorari.*

Although under §§ 134 and 247, Judicial Code, the right to direct review on a constitutional question is confined to cases where the question was raised in the court below, this court still has power to pass upon the question either by certificate from the Circuit Court of Appeals or by certiorari from this court, if in its judgment the question was of sufficient importance to warrant issuing the writ. *Ib.*

3. *Direct review of action of District Courts of Alaska; cases within § 247, Judicial Code.*

Under § 247, Judicial Code, this court has power to review directly the action of the District Courts of Alaska practically in the same classes of cases as were provided in § 5 of the Judiciary Act of 1891. *Ib.*

4. *Direct review of District Court for Alaska in capital case; when assignments inadequate.*

As the record in this case does not show that any reliance was placed, or that any exceptions were based, on the Constitution in the court below, the assignments are inadequate to give this court jurisdiction of a direct appeal from the District Court for Alaska in a capital case. *Ib.*

5. *Under § 237, Judicial Code; denial of Federal right.*
Where the state court by its ruling denies the carrier the benefit of the Interstate Commerce Act, a compliance wherewith was set up in the pleadings and supported by testimony, this court has jurisdiction to review under § 237, Judicial Code. *Atchison, T. & S. F. Ry. Co.* v. *Robinson*, 173; *Atchison, T. & S. F. Ry. Co.* v. *Moore*, 182.

6. *Under § 237, Judicial Code; involution of Federal right.*
Where the state court of last resort sustained the trial court in overruling contentions made by the plaintiff in error, asserting a construction of the Employers' Liability Act which if acceded to would have resulted in a verdict in his favor, this court has jurisdiction under § 237, Judicial Code. *Seaboard Air Line* v. *Horton*, 492.

7. *Under § 237, Judicial Code; denial of claim of Federal right.*
Under § 237, Judicial Code, this court has jurisdiction to review a judgment of a state court denying a claim duly set up under a confirmatory patent issued under § 4 of the Land Grant Adjustment Act of 1887 and holding that the patentee was not entitled to the benefit of the provisions of that section. *Logan* v. *Davis*, 613.

8. *Under § 237, Judicial Code; frivolousness of claim of impairment of contract rights.*
Where the state court based its decision on the ground that there was no original legislative contract to be impaired under a rule of state law which had been so conclusively established as to make the assertion that contract rights were impaired by subsequent legislation frivolous and unsubstantial, there is no basis afforded for jurisdiction of this court to review the judgment under § 237, Judicial Code. *Ennis Water Co.* v. *Ennis*, 652.

9. *Under § 237, Judicial Code; denial of Federal right asserted.*
Where complainants duly asserted Federal rights in opposition to contemplated municipal action, the decision of the court below that they had no right to prevent such action because it was a public wrong which private parties had no right to redress, the Federal right asserted was denied and this court has jurisdiction to review the judgment. *Bowe* v. *Scott*, 658.

10. *Under § 237, Judicial Code; what amounts to assertion of Federal right.*
A mere assertion in a state court of a right under the Constitution of the United States, in a petition for rehearing, affords no ground for invoking the jurisdiction of this court unless the court below, in

dealing with the petition, considers and passes upon the Federal ground therein relied upon. *Ib.*

11. *Under § 237, Judicial Code; what amounts to assertion of Federal right.*

A mere allegation in the bill in a suit to enjoin enforcement of an ordinance, that the latter is unconstitutional because impairing the obligation of a contract between the municipality and a third person not a party to the suit, is not such an assertion of Federal rights as will afford a basis for jurisdiction of this court under § 237, Judicial Code, to review the judgment dismissing the bill. *Ib.*

12. *Under § 237, Judicial Code; what amounts to assertion of Federal right.*

Where the state constitution contains a due process of law clause, an averment that contemplated action of a municipality would deprive complainant of his property without due process of law, without making reference to the Constitution of the United States or asserting express rights thereunder, is referable to the state constitution alone and affords no basis for invoking the jurisdiction of this court under § 237, Judicial Code. *Ib.*

13. *Under § 237, Judicial Code; what amounts to denial of due process of law.*

The due process clause of the Fourteenth Amendment does not control methods of state procedure or give jurisdiction to this court to review mere errors of law alleged to have been committed by a state court in the performance of its duties and within the scope of its authority concerning matters non-Federal in character. *McDonald* v. *Oregon R. R. & Nav. Co.*, 665.

14. *Under § 237, Judicial Code; what amounts to denial of due process of law.*

It is the lack of jurisdiction in the sense of fundamental absence of any and all right to take cognizance of the cause that amounts to deprivation of property without due process of law and gives this court power to review the judgment of the state court under § 237, Judicial Code, not the wrongful exercise of jurisdiction in the sense of duty to rightfully decide subjects to which judicial power extends. (*Castillo* v. *McConnico*, 168 U. S. 674.) *Ib.*

15. *To review judgment of state court; finality of judgment.*

As the judgment of the state court disposed of, and ordered the delivery of the property sued for, and in so doing disposed of the

Federal defense interposed, it has substantial finality on which to base the writ of error, notwithstanding a reservation as to some property not appurtenant and provision for an accounting as to certain disbursements. *Carondelet Canal & Nav. Co.* v. *Louisiana*, 362.

16. *To review judgment of state court; finality of judgment.*

If the further proceedings in the court below apply only to questions reserved, so that the decree can be immediately executed as to the property involved, and as to that it is final, the judgment is final in form as well as in substance, and a writ of error properly lies from this court. *Ib.*

17. *To review judgment of state court; effect of failure of court to refer to statute claimed to have impaired contract rights.*

The fact that the Supreme Court of the State did not refer to a statute claimed to have impaired the rights of plaintiff in error, does not prevent this court from considering that statute, and if it was an essential, although an unmentioned, element of the decision, it is a basis for the Federal question set up. *Ib.*

18. *To review judgment of state court when non-Federal ground sufficient to sustain it.*

Where the judgment of the state court rests upon an independent or non-Federal ground which is adequate to sustain it, this court has not jurisdiction to review it. *Holden Land Co.* v. *Inter-State Trading Co.*, 536.

19. *To review judgment of state court; absence of essential Federal question.*

Where, as in this case, the decision of the state court involves simply the exercise of the equitable jurisdiction in accordance with the jurisprudence of the State, the ruling which prescribes the conditions of relief is not reviewable by this court. *Ib.*

20. *To review judgment of state court rested on non-Federal ground sufficient to sustain it.*

In this case the decision that a party seeking to redeem lands might do so on equitable grounds only and on the equitable condition that he pay the debt with legal interest, *held* that the decision rested on a non-Federal ground sufficient to sustain it and was not reviewable here. *Ib.*

21. *Under § 238, Judicial Code; character of jurisdictional question.*
The provision in § 238, Judicial Code, providing for a direct writ of error in any case in which the jurisdiction of the court is in issue, refers to cases in which the power of the court, as a Federal court, to hear and determine the cause is in controversy. *Farrugia* v. *Philadelphia & Reading Ry Co.*, 352.

22. *Under § 238, Judicial Code; when jurisdictional question wanting.*
Where that power is not in question, but only the sufficiency of the evidence to establish an element of the plaintiff's asserted cause of action, § 238, Judicial Code, does not apply and the writ of error must be dismissed. *Ib.*

23. *Under § 238, Judicial Code; when jurisdictional question wanting.*
A decision of the District Court of the United States granting a compulsory non-suit in an action brought under the Employers' Liability Act because the evidence did not show that the plaintiff was engaged in interstate commerce, is subject to review in the Circuit Court of Appeals. A direct writ of error to this court under § 238, Judicial Code, will not lie as the jurisdiction of the court as a Federal court is not in issue. *Ib.*

24. *Direct review of District Court under § 238, Judicial Code.*
The right of direct review by this court of a judgment of the District Court under § 238, Judicial Code, depends upon whether the question of jurisdiction only is involved or whether the case involves the constitutional or Federal question. *Apapas* v. *United States*, 587.

25. *Direct review of District Court under § 238, Judicial Code.*
This court cannot review directly the judgment of the District Court on the question of jurisdiction under § 238, Judicial Code, when under the writ of error the whole case is brought up and there is no certificate as to the jurisdiction as required by § 238. *Ib.*

26. *Direct review of District Court under § 238, Judicial Code.*
When the constitutional question was not raised in the court below this court cannot directly review the judgment of the District Court under § 238, Judicial Code. (*Itow* v. *United States*, *ante*, p. 581.) *Ib.*

27. *Under Criminal Appeals Act of 1907.*
Where the District Court holds that the acts charged do not fall within the condemnation of the statute on which the indictment is

based, it necessarily construes that statute and this court has jurisdiction under the Criminal Appeals Act of 1907. *United States* v. *Birdsall*, 223.

28. *Under Criminal Appeals Act of 1907.*

Where the case is one of statutory construction, consideration of the statute becomes necessary, and if the validity of departmental regulations is involved, a construction of the statute authorizing the head of the Department to make them is also necessary, and this court has jurisdiction under the Criminal Appeals Act of 1907 to review the judgment sustaining a demurrer to the indictment. *United States* v. *Foster*, 515.

29. *To review judgment of contempt of court.*

While this court cannot review by appeal or writ of error a judgment of the Court of Appeals of the District of Columbia punishing for contempt it may grant a writ of certiorari to review the same. *Gompers* v. *United States*, 604.

B. Of Circuit Courts of Appeals.

See Jurisdiction, A 1, 23.

C. Of District Courts.

See Admiralty.

D. Of Court of Claims.

See Actions, 6.

E. Of Federal Courts Generally.

Crimes by Indians; application of § 328, Penal Code.

Murder committed by Indians on a United States Indian reservation is a crime against the authority of the United States, expressly punishable by § 328, Penal Code, and within the cognizance of the Federal courts without reference to the citizenship of the accused. *Apapas* v. *United States*, 587.

See Admiralty, 4;
Trade-Marks, 4.

F. Admiralty.

See Admiralty.

G. Interstate Commerce Commission.

See Interstate Commerce, 13.

H. GENERALLY.

See PRACTICE AND PROCEDURE, 31.

LABOR.

See CONSTITUTIONAL LAW, 28, 34;
GOVERNMENTAL POWERS, 2;
STATES, 5–8.

LACHES.

See RAILROADS, 4;
TRESPASS, 4.

LAND OFFICE.

See PUBLIC LANDS, 16.

LAW GOVERNING.

See ADMIRALTY, 7, 8;
COMMON CARRIERS;
CONSTITUTIONAL LAW, 32;
EMPLOYERS' LIABILITY ACT, 1;
LIMITATION OF ACTIONS, 1, 2;
RIPARIAN RIGHTS, 1.

LEGISLATION.

Public interest in; presumption as to.

Each act of legislation has the presumption that it has been enacted in the public interest and the burden is on him who attacks it. *Erie R. R. Co.* v. *Williams*, 685.

See CONSTITUTIONAL LAW, 24;
STATUTES, A.

LEGISLATIVE POWER.

See CONGRESS, POWERS OF;
CORPORATIONS;
GOVERNMENTAL POWERS;
INSURANCE, 1, 2;
POLICE POWER.

LIBELS.

See ADMIRALTY.

LIBERTY.

See CONSTITUTIONAL LAW, 34.

LIBERTY OF CONTRACT.

See CONSTITUTIONAL LAW, 3, 4, 16.

LICENSES.

See CONSTITUTIONAL LAW, 1, 14;
INTERSTATE COMMERCE, 3;
TAXES AND TAXATION, 2.

LIENS.

See CONDITIONAL SALE, 2.

LIMITATION OF ACTIONS.

1. *Application of state statute to action based on Federal law.*

That an action depends upon, or arises under, the laws of the United States, does not preclude the application of the statute of limitations of the State. (*McLaine* v. *Rankin*, 197 U. S. 154.) *O'Sullivan* v. *Felix*, 318.

2. *Same.*

An action brought in the state court for damages for personal assault against persons violating Rev. Stat., §§ 5508 and 5509, is not an action for penalties but for remedial damages, and the period of prescription depends upon the law of the State. Rev. Stat., § 1047, does not apply. *Ib.*

See ACTIONS, 6, 7, 8, 9; CRIMINAL LAW, 1;
CONTEMPT OF COURT; IMMIGRATION, 1.

LIMITATION OF LIABILITY.

See ADMIRALTY;
INTERSTATE COMMERCE, 30, 32.

LOCAL LAW.

Alabama. Master and servant (see Actions, 5). *Tennessee Coal, I. & R. R. Co.* v. *George*, 354.

Sewing machine license tax (see Constitutional Law, 1, 14; Taxes and Taxation, 2). *Singer Sewing Machine Co.* v. *Brickell*, 304.

Arizona. Appellate practice; Rev. Stat. 1901, par. 1588 (see Practice and Procedure, 2). *Tevis* v. *Ryan*, 273.

Powers and duties of Board of Equalization (see Practice and Procedure, 14). *Arizona* v. *Copper Queen Mining Co.*, 87.

Arkansas. Railroad double damage statute (see Constitutional Law, 25). *Kansas City Southern Ry. Co.* v. *Anderson*, 325.

Mansfield's Digest, § 642; title to real estate (see Indians, 5). *Franklin* v. *Lynch*, 269.

California. Right of public to use of water. The declaration in the California constitution of 1879 that water appropriated for sale is appropriated for a public use is not to be construed as meaning that the water belongs to the public at large but as meaning that those within reach may obtain it at a reasonable price. *San Joaquin &c. Irrigation Co.* v. *Stanislaus County*, 454.
Amendment of 1911 to § 19, Art. XI, Const. of 1879, as amended in 1884 (see Constitutional Law, 6; Practice and Procedure, 12). *Russell* v. *Sebastian*, 195.

Hawaii. Attachment; Rev. Stat., § 2114 (see Attachment and Garnishment, 6). *Herbert* v. *Bicknell*, 70 (see Constitutional Law, 13). *Ib.* (see Practice and Procedure, 4). *Ib.*

Iowa. Common carriers; use of equipment (see Common Carriers). *Chicago, M. & St. P. Ry. Co.* v. *Iowa*, 334.

Kansas. Law of 1909 regulating rates of fire insurance (see Constitutional Law, 16). *German Alliance Ins. Co.* v. *Kansas*, 389.

Louisiana. Carondelet Canal & Navigation Company; acts of 1857, 1858 (see Constitutional Law, 9). *Carondelet Canal & Nav. Co.* v. *Louisiana*, 362.

Michigan. Vehicle law (see Practice and Procedure, 9). *Metzger Motor Car Co.* v. *Parrott*, 36.

Mississippi. Riparian rights. In Mississippi the common law prevails as to riparian rights, and he who owns the bank owns to the middle of a navigable river subject to the easement of navigation. *Archer* v. *Greenville Sand & Gravel Co.*, 60.

New Mexico. Railroads; Comp. Laws, §§ 3850, 3874 (see Railroads, 6). *Denver & Rio Grande R. R.* v. *Arizona & Colorado R. R.*, 601.
Comp. Laws, § 2135, relative to mining claims (see Public Lands, 11). *El Paso Brick Co.* v. *McKnight*, 250.

New York. Inheritance tax statute (see Constitutional Law, 17). *Wheeler* v. *Sohmer*, 434.
Labor Law of 1907 (see Constitutional Law, 18). *Erie R. R. Co.* v. *Williams*, 18.
Hours of service provision of Labor Law of 1907 (see Interstate Commerce, 18). *Erie R. R. Co.* v. *New York*, 671.
Second offense provision of Penal Code (see Criminal Law, 2). *Carlesi* v. *New York*, 51.

Porto Rico. Conveyances; necessity for assent of wife. The Civil Code of Porto Rico of March 1, 1902, did not go into effect until July 1, 1902, *Ortega* v. *Lara*, 202 U. S. 339, and prior thereto the wife's assent to a conveyance by her husband was not necessary. *Nadal* v. *May*, 447.

Partnerships; Civ. Code, § 1567 (see Contracts, 12). *Valdes* v. *Larrinaga*, 705.

Texas. Act of 1909, imposing attorney's fee on defeated defendant (see Constitutional Law, 31). *Missouri, K. & T. Ry. Co.* v. *Cade*, 642.

Railroad employés; act of 1909 (see Constitutional Law, 29). *Smith* v. *Texas*, 630.

Wisconsin. Stats., § 1797–11m, providing for construction by railroads of spur tracks (see Railroads, 10). *Union Lime Co.* v. *Chicago & N. W. Ry. Co.*, 211.

Generally.—See RIPARIAN RIGHTS, 1.

LOCAL PRACTICE.

See PRACTICE AND PROCEDURE, 1, 2, 5.

MAILS.

1. *Regulations as to returns of sales of stamps; power of Postmaster General to prescribe.*

Under § 161, Rev. Stat., authorizing heads of the Executive Departments to prescribe regulations not inconsistent with law, the Postmaster General has power to prescribe regulations requiring postmasters to make proper returns of sales of stamps at their respective offices; and such regulations have the force of law. *United States* v. *Foster*, 515.

2. *Salaries of postmasters; theory of act of March 3, 1883.*

The theory of the act of March 3, 1883, is that every postmaster shall receive a salary dependent upon and regulated by the amount of business done at his office as represented by normal and natural—not unlawfully induced—sales of stamps. *Ib.*

3. *Salaries of postmasters; conspiracy to enlarge; sufficiency of indictment for.*

An indictment charging a postmaster and others with conspiring under § 37, Penal Code, to violate §§ 206 and 208, Penal Code, by the sale and purchase of stamps in large quantities to be used at other

post offices so as to fraudulently increase his salary, and also charging violation of regulations of the Department in that respect, is sufficient. *Ib.*

See CONTRACTS, 8–11.

MANDATE.

See PRACTICE AND PROCEDURE, 23.

MARITIME LAW.

See ADMIRALTY.

MASTER AND SERVANT.

1. *Assumption of risk; effect of master's breach of duty.*

When the employé knows of a defect in the appliances used by him and appreciates the resulting danger and continues in the employment without objection, or without obtaining from the employer an assurance of reparation, he assumes the risk even though it may arise from the employer's breach of duty. *Seaboard Air Line* v. *Horton*, 492.

2. *Assumption of risk; effect of promise of reparation by master.*

Where there is promise of reparation by the employer, the continuing on duty by the employé does not amount to assumption of risk unless the danger be so imminent that no ordinarily prudent man would rely on such promise. *Ib.*

3. *Duty of master as to safety of place; continuing character of.*

The duty of the master to use reasonable diligence to provide a safe place for the employés to work is a continuing one which is discharged only when he provides and maintains a place of that character. *Myers* v. *Pittsburgh Coal Co.*, 184.

4. *Duty of master as to safety of place and appliances where occupation hazardous.*

Where workmen are engaged in a hazardous occupation, such as underground mining, it is the duty of the master to exercise reasonable care for their safety, and not to expose them to injury by use of dangerous appliances or unsafe places to work, when such appliances and places can, by the exercise of due care, be made reasonably safe. *Ib.*

5. *Liability of master; sufficiency of instruction as to.*

Where the court clearly instructed the jury that the defendant mine-owner was not liable in case the haulage system alleged to have

caused the accident was in charge of a person for whose conduct the owner was not responsible under the law, and that the owner was only liable in case that system was under charge of a person for whose conduct the owner was responsible, the charge in this respect is not unfavorable to the owner and affords no ground for reversal. *Ib.*

See ACTIONS, 5; CONGRESS, POWERS OF, 2; APPEAL AND ERROR, 2; EMPLOYERS' LIABILITY ACT; INSTRUCTIONS TO JURY, 2.

MATERIALMEN.

See ACTIONS, 7, 8, 9.

MINERAL LANDS.

See PUBLIC LANDS, 9–17.

MINES AND MINING.

See MASTER AND SERVANT, 4; PUBLIC LANDS, 10; TAXES AND TAXATION, 4.

MORTGAGES AND DEEDS OF TRUST.

See CONDITIONAL SALE, 2.

MUNICIPAL CORPORATIONS.

See CONSTITUTIONAL LAW, 6; GRANTS, 3, 4; PUBLIC UTILITIES.

MURDER.

See JURISDICTION, E.

NAVIGABLE WATERS.

Negligence in use of; liability for collision with anchored vessel not having license from Secretary of War.

The fact that a vessel is anchored in a navigable river without the authority of the Secretary of War does not endow other vessels with a license to wrongfully injure it, nor does that fact relieve them from responsibility for colliding with the anchored vessel solely by their own negligence not contributed to in any way by it. *Cornell Steamboat Co.* v. *Phœnix Const. Co.*, 593

See LOCAL LAW (MISS.); RIPARIAN RIGHTS, 1, 2; TRESPASS.

NAVY.

See ARMY AND NAVY.

NEGLIGENCE.

Question for determination of jury.

Where, on the evidence, reasonable men might well find that a man, found in a mangled and dying condition in a mine on a track beneath an overhead wire, was killed by negligence, and it cannot be said that no such conclusion could be reached on the testimony, it is not error to submit the question to the jury; and where, as in this case, the testimony can fairly support the verdict, it should not be set aside. *Myers* v. *Pittsburgh Coal Co.*, 184.

See EMPLOYERS' LIABILITY ACT, 2, 3, 4;
INSTRUCTIONS TO JURY, 2;
NAVIGABLE WATERS.

NOTICE.

See ATTACHMENT AND GARNISHMENT, 5, 6;
CONDITIONAL SALE, 3;
CONSTITUTIONAL LAW, 13.
CONTRACTS, 1;
INTERSTATE COMMERCE, 14, 16, 31;
PUBLIC LANDS, 8.

NUISANCE.

See EMINENT DOMAIN, 3.

OFFENSES.

See BRIBERY;
CONTEMPT OF COURT, 1;
IMMIGRATION, 3;
JURISDICTION, E.

OFFICIAL ACTION.

See BRIBERY.

OLEOMARGARINE.

See CONSTITUTIONAL LAW, 15, 22.

ONUS PROBANDI.

See EVIDENCE, 3.

PARDONS.

See CRIMINAL LAW, 2, 3;
STATES, 3.

PARTIES.

See ACTIONS, 6;
PRACTICE AND PROCEDURE, 27, 28.

PARTNERSHIP.

See CONTRACTS, 12.

PATENT FOR LAND.

See PUBLIC LANDS.

PENALTIES AND FORFEITURES.

1. *Penalty defined and differentiated from recovery for damages.*

The term "penalty" involves the idea of punishment for infraction of the law and includes any extraordinary liability to which the law subjects a wrongdoer in favor of the person wronged, not limited to the damages suffered while in a civil suit the amount of recovery for such damages is determined by the extent of the injury received and the elements constituting it. *O'Sullivan* v. *Felix*, 318.

2. *Statutory allowance of attorney's fee; effect as penalty.*

A statute allowing an attorney's fee in cases involving small amounts is not one imposing a penalty where it appears that the effect is merely to require defendant to reimburse plaintiff for part of his expenses. *Missouri, K. & T. Ry. Co.* v. *Cade*, 642.

See APPEAL AND ERROR, 4;
CRIMINAL LAW, 3, 4, 5.

PLEADING.

1. *Amendment of; relation.*

An amendment dates back to the filing of the petition and is to supply defects in the petition with reference to the cause of action then existing, or at most to bring into the suit grounds of action which did exist at the beginning of the case. *Texas Portland Cement Co.* v. *McCord*, 157.

2. *Construction by this court.*

This court will read pleadings as alleging what they fairly would convey to an ordinarily intelligent lawyer by a fairly exact use of English speech. (*Swift Co.* v. *United States*, 196 U. S. 375.) *Kansas City Southern Ry. Co.* v. *Kaw Valley District*, 75.

See ACTIONS, 8, 9; EMPLOYERS' LIABILITY ACT, 3;
ADMIRALTY, 1, 2; TRESPASS, 2.

POLICE POWER.

Necessity for exercise; legislative and judicial functions.

The legislature is the judge in the first instance of whether a police

regulation is necessary; judicial review is limited, and even an earnest conflict of public opinion does not bring the question of necessity within the range of judicial cognizance. *Erie R. R. Co.* v. *Williams*, 685.

See CONSTITUTIONAL LAW, 18;
COURTS;
INTERSTATE COMMERCE, 25, 28.

POSTAL CONTRACTS.

See CONTRACTS, 8–11.

POSTAL LAWS AND REGULATIONS.

See MAILS.

POSTMASTER GENERAL.

See MAILS, 1.

POWERS OF CONGRESS.

See ADMIRALTY, 5;
CONGRESS, POWERS OF;
EMINENT DOMAIN, 3;
INTERSTATE COMMERCE, 10, 23.

PRACTICE AND PROCEDURE.

1. *Attitude of court in respect of decision turning upon local practice.*

This court is not lightly disposed to disturb the decision of a territorial Supreme Court turning, as it does in this case, largely upon local practice. *Tevis* v. *Ryan*, 273.

2. *Effect of territorial court's ruling and of local practice relative to remitting damages awarded.*

In affirming the judgment of the Supreme Court of the Territory of Arizona which has been reduced by remittitur, this court does not necessarily hold that the rulings of the court below were indubitably correct, and it also takes into consideration Rev. Stat. Arizona 1901, par. 1588, providing in substance that the trial court shall not be reversed for want of form if there is sufficient matter of substance in the record to enable the Supreme Court to decide the case upon the merits, and that excessive damages may be remitted pending the appeal. *Ib.*

3. *Following territorial court's finding of facts.*

Where the Supreme Court of a Territory has made a statement of facts in the nature of a special verdict, this court must consider

the case when it comes here on appeal upon that finding. *Arizona* v. *Copper Queen Mining Co.*, 87.

4. *Following Hawaiian Supreme Court's determination as to sufficiency of service of process.*

The Hawaiian Supreme Court having held that leaving a copy of the summons at the place where defendant last had stopped amounted to leaving it at his usual abode within § 2114, Rev. Laws of Hawaii, this court will not disturb the judgment. *Herbert* v. *Bicknell*, 70.

5. *Reluctance to disturb state courts' decisions.*

This court is slow to disturb the decision of the Supreme Court of a Territory in regard to matters of local practice and the construction of state statutes. (*Nadal* v. *May*, *ante*, p. 447.) *Denver & Rio Grande R. R.* v. *Arizona & Colorado R. R.*, 601.

6. *Deference to decisions of local courts on matters of local concern.*

This court, as a general rule, is unwilling to overrule local tribunals upon matters of purely local concern. (*Sante Fe Central Ry.* v. *Friday*, 232 U. S. 694.) *Nadal* v. *May*, 447.

7. *Review of facts concerning subject of Federal jurisdiction on error to state court.*

While the fact of negligence may, if abstractly considered, be a state question concerning which this court would accept, and possibly might be bound by, the decision of the state court, when the negligence involves and concerns a subject of Federal jurisdiction which it is its duty to decide, this court must, to the extent necessary to enable it to discharge that duty, consider the subject independent of the action of the state court. (*Southern Pacific Co.* v. *Schuyler*, 227 U. S. 601.) *Cornell Steamboat Co.* v. *Phœnix Const. Co.*, 593.

8. *Controlling effect of state court's construction of state statute.*

This court cannot treat as existing a state statute which the court of last resort of that State has held cannot be enforced compatibly with the state constitution. *Metzger Motor Car Co.* v. *Parrott*, 36.

9. *Controlling effect of state court's construction of state statute.*

The highest court of Michigan having, since the judgment herein was rendered below held the provisions of the Vehicle Law of that State on which this action was based void under the state constitution, this court must regard such law as non-existent and reverse the judgment which was based solely thereon. *Ib.*

10. *Following state court's construction of state statute.*
This court follows the construction of the highest court of the State to the effect that a statute imposing an attorney's fee on the defeated defendant is limited to claims of an amount specified in the title. *Missouri, K. & T. Ry. Co.* v. *Cade*, 642.

11. *Following state court's construction of state statute.*
In determining its constitutionality a state statute must be read in the light of the construction given to it by the state court; and if the state court has held a described use for which property may be taken thereunder to be a public one, this court will accept its judgment unless it is clearly without ground. *Union Lime Co.* v. *Chicago & N. W. Ry Co.*, 211.

12. *Following state court's construction of state statute or constitutional provision.*
The state court having construed a statutory or constitutional provision, which gave specified privileges in regard to public utilities in a certain class of municipalities under specified conditions without specifying the persons or corporations who could avail thereof or the method of acceptance, to the effect that the grant became effective in any municipality within the designated class by the party accepting it as if it had been made specially to the accepting party, this court follows such construction in regard to § 19 of art. XI of the constitution of 1879 of California as amended in 1884. *Russell* v. *Sebastian*, 195.

13. *Following state court's construction of state statute.*
In testing the repugnancy of a state statute to the Federal Constitution, this court must accept the construction given to the statute by the state courts. *Carlesi* v. *New York*, 51.

14. *Following territorial court's construction of local statute.*
In exercising appellate jurisdiction over the territorial courts in cases involving construction of a statute by the Territory, this court will not, in the absence of manifest error, reverse the action of the territorial court in regard to such construction; and so *held* as to the construction placed by the Supreme Court of Arizona on the statutes of that Territory defining the powers and duties of the Board of Equalization. *Arizona* v. *Copper Queen Mining Co.*, 87.

15. *Construction by this court of state statute in absence of construction by state courts.*
In the absence of a construction by the state courts to that effect, this

court will not concede that a state statute confers its benefits only upon natural persons who are plaintiffs in certain classes of actions and not upon corporation plaintiffs. *Missouri, K. & T. Ry. Co.* v. *Cade*, 642.

16. *Scope of review where state statute under review on writ of error to inferior state court has been upheld by highest court of State.*

Where a state statute has been held unconstitutional under the state constitution by an inferior state court, and subsequently has been upheld by the highest court of the State, this court, when the case is properly here under § 237, Judicial Code, must regard the statute as valid under the state constitution and consider only the question of its validity under the Federal Constitution, although intermediately this court has followed the decision of the lower state court. *Ib.*

17. *Scope of review in case based on Employers' Liability Act.*

Quære, whether ordinary questions of negligence are open in this court in a case coming from the state court based on the Federal Employers' Liability Act. *Southern Ry. Co.* v. *Bennett*, 80.

18. *Scope of review and disposition of case where writ of error based on Federal statute but case concerns only questions of general law.*

In a case in which the writ of error to the Circuit Court of Appeals is based on the Employers' Liability Act, but presents for decision no question concerning the interpretation of that act, but only considerations of general law, this court, while it has power to consider all such questions, will not reverse as to such questions unless it clearly appears that error has been committed. *Southern Ry. Co.* v. *Godd*, 572.

19. *Determination of validity of state statute under Federal and state constitutions.*

While this court must decide for itself whether a state statute is repugnant to the Federal Constitution, it must accept the ruling of the state court as to the repugnancy of that statute to the state constitution. *Metzger Motor Car Co.* v. *Parrott*, 36.

20. *Determination of question of impairment under contract clause of Constitution.*

In determining the question of impairment under the contract clause of the Constitution it is the duty of this court to determine for itself the nature and extent of rights acquired under prior legislative or constitutional action. *Russell* v. *Sebastian*, 195.

21. *Decision as to existence of contract claimed to be impaired; law creating as part of.*

Although when the assertion is made that contract rights are impaired it is the duty of this court to determine for itself whether or not there was a valid contract, in considering a contract arising from a state law or a municipal ordinance this court will treat it as though there was embodied in its text the settled rule of law which existed in the State when the action relied upon was taken. *Ennis Water Co.* v. *Ennis*, 652.

22. *Reversals; decree construing contract in foreign language not reversed where translation only before court.*

Where no error of magnitude is made by the court below in construing a contract for services executed in a foreign language and establishing the amount due thereunder, and only a translation of the contract is before this court, the decree will not be reversed. *Valdes* v. *Larrinaga*, 705.

23. *Mandate on reversal of Circuit Court of Appeals in case coming from Circuit Court which has been succeeded by District Court.*

The trial court having entered judgment on a verdict for plaintiff and the Circuit Court of Appeals having reversed, and without remanding or directing a new trial, ordered judgment for defendant, this court, finding there was no reversible error in the conduct of the trial, reverses the judgment of the Circuit Court of Appeals and affirms the judgment of the trial court and remands the case to the District Court which has succeeded to the jurisdiction of the Circuit Court which tried the case. *Myers* v. *Pittsburgh Coal Co.*, 184.

24. *Excessive verdict; reversal for; attitude of court.*

Even though the verdict may seem large to this court, it cannot reverse on that ground in the absence of error which warrants imputing to judge and jury a connivance in escaping the limits of the law. *Southern Ry. Co.* v. *Bennett*, 80.

25. *Judgment under review not to be qualified by speculation.*

This court must take the judgment under review as it stands and if it is absolute and not conditional it cannot be qualified by speculation as to what may in fact happen. *Kansas City Southern Ry. Co.* v. *Kaw Valley District*, 75.

26. *Disposition of case where state statute under which case brought declared unconstitutional by state court.*

Where, since the judgment of the United States District Court was

obtained the highest court of the State has declared the state statute on which the case was brought to be unconstitutional under the state constitution, and there is no right to recover in the absence of statute, it is the obvious duty of this court to reverse the judgment. *Metzger Motor Car Co.* v. *Parrott*, 36.

27. *Who may attack constitutionality of state statute.*

A defendant corporation is not in a position to assail a state statute as denying equal protection of the law because its benefits do not inure to corporations which are plaintiffs. *Missouri, K. & T. Ry. Co.* v. *Cade*, 642.

28. *Who may attack constitutionality of state statute.*

An employer cannot be heard to attack a state statute relating to payment of wages, on the ground that it denies to some of his employés the equal protection of the law because they are not within its protection. *Erie R. R. Co.* v. *Williams*, 685.

29. *Ground of attack of state statute limited by basis of suit.*

The validity of a state statute under the Commerce Clause or the Act to Regulate Commerce cannot be attacked in a suit which is not based upon a claim arising out of interstate commerce. *Missouri, K. & T. Ry. Co.* v. *Cade*, 642.

30. *Trial; exception; when general exception sufficient.*

Where the statute of limitations was pleaded, and, after a decision that it was inapplicable, one general exception was presented on his behalf in that regard, the rights of the defendant are sufficiently preserved. *Gompers* v. *United States*, 604.

31. *Estoppel of defendant to deny power of state court to exert jurisdiction invoked by him.*

Where a defendant in the state court did not object to the jurisdiction of the court to entertain an action to enjoin him from enforcing his rights of ownership, but went further and sought affirmative relief in that action, he cannot be heard in this court to deny that the court had any power to exert the very jurisdiction which he invoked. *McDonald* v. *Oregon R. R. & Nav. Co.*, 665.

See ATTACHMENT AND GARNISHMENT, 6; CERTIORARI; EVIDENCE, 1; JUDICIAL NOTICE.

PRESUMPTIONS.

See LEGISLATION;
TAXES AND TAXATION, 1;
TRESPASS, 2.

PRINCIPAL AND AGENT.

See PUBLIC LANDS, 15.

PROCESS.

See APPEAL AND ERROR, 3; CONSTITUTIONAL LAW, 13; ATTACHMENT AND GARNISHMENT; PRACTICE AND PROCEDURE, 4.

PROPERTY RIGHTS.

See CONSTITUTIONAL LAW, 5, 11, 12; EMINENT DOMAIN.

PROSTITUTION.

See IMMIGRATION, 3, 4, 5.

PROVISOS.

See STATUTES, A 9; TRADE-MARKS, 2.

PUBLIC GRANTS.

See GRANTS.

PUBLIC LANDS.

1. *Entries; effect of irregularity in affidavit of posting.*

Where there has been compliance with the substantial requirements of the land laws, irregularities are waived or permission given to cure them; and so *held* that, under the circumstances of this case, as there had been proper posting under Rev. Stat., §§ 2325 and 2333, the fact that the original affidavit of posting was made before an officer residing outside the district and not within the district as required by § 2335, did not render the entry void. The defect was curable and cancellation of entry for that defect alone was improper. *El Paso Brick Co.* v. *McKnight*, 250.

2. *Erroneous rulings; effect of yielding to, on rights of locator.*

The yielding of a locator holding a final receipt to an erroneous ruling does not destroy the rights with which he has become vested by full compliance with the requirements of Rev. Stat., § 2325. *Ib.*

3. *Locations; effect of entry by local land officer issuing final receipt.*

The entry by the local land officer issuing the final receipt to a locator is in the nature of a judgment *in rem* and determines the validity of locations, completion of assessment work and absence of adverse claims. *Ib.*

4. *Locations; title of holder of final receipt.*
The holder of a final receipt is in possession under an equitable title, and until it is lawfully canceled is to be treated as though the patent had been delivered to him. (*Dahl* v. *Raunheim*, 132 U. S. 260.) *Ib.*

5. *Location on land segregated from public domain; effect of.*
A locator acquires no rights by locating on property that had previously been, and then was, segregated from the public domain. *Ib.*

6. *Purchaser in good faith under Adjustment Act of 1887; conclusiveness of decision of Secretary of Interior.*
The decision of the Secretary of the Interior that the grantee of a railroad company was a purchaser in good faith in the sense of the Adjustment Act of 1887, is conclusive so far as it is based on fact and cannot be disturbed except as it may be grounded upon an error of law, there being no charge of fraud. *Logan* v. *Davis*, 613.

7. *Purchases in good faith under Adjustment Act of 1887; conclusiveness of decisions of Secretaries of Interior.*
Successive Secretaries of the Interior having uniformly interpreted the remedial sections of the Adjustment Act of 1887 as embracing purchases made after the date of the act, no less than prior purchases, if made in good faith, and many thousands of acres having been patented to individuals under that interpretation, this court will not now disturb it. *Knepper* v. *Sands*, 194 U. S. 476, distinguished. *Ib.*

8. *Purchaser in good faith within § 4 of Adjustment Act of 1887.*
One is a purchaser in good faith within the sense of § 4 of the Adjustment Act of 1887, if he is in actual ignorance of defects in the railroad company's title and the transaction is an honest one on his part, the ordinary rule respecting constructive notice being inapplicable. (*United States* v. *Winona & St. Peter R. R. Co.*, 165 U. S. 463.) *Ib.*

9. *Mineral lands; when lands become valuable for coal; admissibility of evidence to establish character of lands.*
There is no fixed rule that lands become valuable for coal only through its actual discovery within their boundaries. On the contrary, they may, and often do, become so through adjacent disclosures and other surrounding or external conditions; and when that

question arises, any evidence logically relevant to the issue is admissible, due regard being had to the time to which it must relate. *Colorado Coal & Iron Co.* v. *United States*, 123 U. S. 307, distinguished. *Diamond Coal Co.* v. *United States*, 236.

10. *Mining claims; locators' rights; essentials to fee simple title.*
Locators of mining claims have the exclusive right of possession of all the surface so long as they make the improvements or do the annual assessment work required by Rev. Stat., § 2324. To convert this defeasible possessory right into a fee simple the locator must comply with the provisions of Rev. Stat., §§ 2325, 2333. *El Paso Brick Co.* v. *McKnight*, 250.

11. *Mining claims; conflict of state and Federal laws; quære as to.*
Quære, whether § 2135, Comp. Laws New Mexico, imposing upon a locator of mineral lands the burden of proving that he has performed the annual assessment work, is void as in conflict with the Federal statutes. See *Hammer* v. *Garfield*, 130 U. S. 29. *Ib.*

12. *Annulment of patent; suit for; burden of proof in.*
In a suit by the Government to annul a patent, issued under a non-mineral-land law, on the ground that the patent was fraudulently procured for lands known to be mineral, the burden of proof rests upon the Government and must be sustained by that class of evidence which commands respect and that amount of it which produces conviction. *Diamond Coal Co.* v. *United States*, 236.

13. *Annulment of patent issued under non-mineral-land law; sufficiency of showing of knowledge of mineral value.*
To justify the annulment of a patent issued under a non-mineral-land law as wrongfully covering mineral lands, it must appear that at the time of the proceedings in the land department resulting in the patent the lands were known to be valuable for mineral, for no subsequent discovery of mineral can affect the patent. *Ib.*

14. *Same.*
In this case the evidence shows with requisite certainty that at the time of the proceedings in the land department resulting in the patents sought to be annulled, the lands were known to be valuable for coal and were sought for that reason. *Ib.*

15. *Annulment of patent for fraud; status of principal purchasing from agent.*
Where an agent, at the instance and for the benefit of his principal,

fraudulently secures patents under a non-mineral-land law for lands known to be valuable for mineral and then transfers the lands to his principal, the latter is not a *bona fide* purchaser, and the patents may be annulled in a suit by the Government. *Ib.*

16. *Annulment of fraudulent entries; power of General Land Office.*
While the General Land Office has power of supervision over acts of local officers and can annul entries obtained by fraud or made without authority of law, it may not arbitrarily exercise this power; and if a cancellation is made on mistake of law it is subject to judicial review when properly drawn in question in judicial proceedings. *El Paso Brick Co.* v. *McKnight*, 250.

17. *Patent for; when voidable at suit of Government.*
A patent for mineral lands secured under a non-mineral-land law by fraudulently and falsely representing them to be non-mineral, although not void or open to collateral attack, is voidable and may be annulled in a suit by the Government against the patentee or a purchaser with notice of the fraud. *Diamond Coal Co.* v. *United States*, 236.

18. *Relation of United States in respect of.*
Under the policy of the land laws the United States is not an ordinary proprietor selling land and seeking the highest price, but offers liberal terms to encourage the citizen and develop the country. *El Paso Brick Co.* v. *McKnight*, 250.

19. *Evidence; affidavit of work as; quære.*
Quære, whether an affidavit of work offered for one purpose by an adverse claimant can be used for another purpose by the locator as substantive evidence in the case. *Ib.*

See JURISDICTION, A 7.

PUBLIC NUISANCE.

See EMINENT DOMAIN, 3.

PUBLIC OFFICERS.

See BRIBERY.

PUBLIC POLICY.

See CONTRACTS, 15.

PUBLIC UTILITIES.

1. *Duty to extend service.*
The duty of a public service corporation to extend its service to meet

reasonable demands of the community is correlative to the obligation of the municipality to allow the service to be extended as required by the public needs. *Russell* v. *Sebastian*, 195.

2. *Duty and right to extend service; effect of subsequent legislation impairing.*

In this case the public service corporation having, by accepting the offer of the State and making the investment, committed itself irrevocably to the undertaking, it was entitled to continue to lay pipes in the streets whenever necessary to extend its service, and it could not be prevented from doing so by subsequent legislation impairing the grant. *Ib.*

See RATE REGULATION, 2.

RAILROADS.

1. *Claims against; state power to regulate settlement of.*

The States have a large latitude in the policy which they will pursue in regard to enforcing railroad companies to settle damage claims promptly and properly. (*Chi., M. & St. P. Ry. Co.* v. *Polt*, 232 U. S. 165.) *Kansas City Southern Ry. Co.* v. *Anderson*, 325.

2. *Consequential damages to neighboring property from operation; liability for.*

While the owners of a railroad constructed and operated for the public use, although with private property for private gain, are not, in the absence of negligence, subject to action in behalf of owners of neighboring private property for the ordinary damages attributable to the operation of the railroad, a property owner may be entitled to compensation for such special damages as devolve exclusively upon his property and not equally upon all the neighboring property. *Richards* v. *Washington Terminal Co.*, 546.

3. *Consequential damages to neighboring property; liability for.*

In this case, *held* that an owner of property near the portal of a tunnel in the District of Columbia constructed under authority of Congress, while not entitled to compensation for damages caused by the usual gases and smoke emitted from the tunnel by reason of the proper operation of the railroad is entitled to compensation for such direct, peculiar and substantial damages as specially affect his property and diminish its value. *Ib.*

4. *Right of way; location; laches in.*

Under the circumstances of this case, the plaintiff railroad company

was not guilty of laches in the location and protection of its right of way. *Denver & Rio Grande R. R.* v. *Arizona & Colorado R. R.*, 601.

5. *Right of way; location and construction; rights acquired by, as against adverse claimant.*

A defendant railroad company acquires no new rights by going ahead with location and construction after a suit has been commenced by another company claiming a prior location. *Ib.*

6. *Protection; when entitled under laws of New Mexico.*

This court sees no reason for reversing the Supreme Court of the Territory of New Mexico in holding that a railroad company was entitled under §§ 3850 and 3874, Compiled Laws, to protection as soon as its final location was completed. *Ib.*

7. *Bridges; nature of consent to construction by Drainage District; quære.*

Quære, whether a consent by a Drainage District to the construction of a railroad bridge is not to be regarded as a license rather than an abdication of the continuing powers of the District to require subsequent elevation of the bridge. *Kansas City Southern Ry. Co.* v. *Kaw Valley District*, 75.

8. *Spur tracks; when devoted to a public use.*

Even though a spur track at the outset may lead only to a single industry, it may constitute a part of the transportation facilities of the common carrier operated under obligations of public service, and as such open to all and devoted to a public use. *Union Lime Co.* v. *Chicago & N. W. Ry. Co.*, 211.

9. *Spur tracks; effect of devotion to public use.*

There is a clear distinction between spurs operated as a part of the system of a common carrier under public obligation and mere private sidings. The former are limited to public use and may be the basis for exercise of eminent domain. *Ib.*

10. *Spur tracks; acquisition of land for; power of eminent domain in.*

It is within the power of the State to invest railway corporations with power of eminent domain to acquire land for a spur track necessary for its transportation business and subject to regulation and open alike to all, even though such track at the outset may serve only a single industry which is to defray the cost thereof subject to reimbursement by others subsequently availing of it;

and so *held* as to § 1797–11m, Wisconsin Statutes, providing for construction of spur tracks under conditions specified therein. *Ib.*

See COMMON CARRIERS; CONGRESS, POWERS OF, 2; CONSTITUTIONAL LAW, 2, 10, 18, 19; 25, 26, 29; INTERSTATE COMMERCE; PUBLIC LANDS, 6, 8

RATE REGULATION.

1. *Reasonableness; considerations in determining.*

As the franchise involved in this case provides that the rates for supplying water may be fixed by a public body but so that the returns shall not be less than a specified per cent. on the value of all the property actually used and useful to the appropriation and furnishing of the water, the value of the water rights owned by the company must be taken into account in establishing such rates. *San Joaquin &c. Irrigation Co.* v. *Stanislaus County*, 454.

2. *Remedies; when public utility corporation may attack rate.*

A party may wait until after a law is passed or a regulation is made which affects his interests and then stand upon his constitutional rights; and so *held* that a public utility corporation may attack a rate as confiscatory after it has been made, although it offered no evidence as to the value of its property and of the service rendered before the governing body establishing the rate. (*Prentis* v. *Atlantic Coast Line*, 211 U. S. 210.) *Ib.*

See CONSTITUTIONAL LAW, 3, 16, 23; GOVERNMENTAL POWERS, 4; INSURANCE, 1; INTERSTATE COMMERCE, 33, 34, 35, 38.

RATES.

See INTERSTATE COMMERCE.

REAL PROPERTY.

See CONDITIONAL SALE, 2.

REMEDIAL STATUTES.

See STATUTES, A 6.

REMEDIES.

See RATE REGULATION, 2.

REPARATION.

See INTERSTATE COMMERCE, 33–36.

REPEALS.

See CONSTITUTIONAL LAW, 8, 9.

RES JUDICATA.

See IMMIGRATION, 4;
INTERSTATE COMMERCE, 37;
PUBLIC LANDS, 6, 7.

RETURN OF PROCESS.

See APPEAL AND ERROR, 3.

REVERSION.

See STATES, 9;
WORDS AND PHRASES.

RIGHT OF WAY.

See RAILROADS, 4, 5.

RIPARIAN RIGHTS.

1. *Law governing.*

It is a question of local law whether the title to the bed of the navigable rivers of the United States is in the State in which the rivers are situated or in the owners of the land bordering on such rivers. *Archer* v. *Greenville Sand & Gravel Co.*, 60.

2. *Right of owner of upland to prevent removal of gravel from bed of navigable stream.*

An owner of the upland, who, under the law of the State, owns to the middle of a navigable river, has such an interest in the bed of the stream that, even though he cannot remove gravel therefrom without the consent of the Secretary of War, he can maintain an action to prevent others from doing so. *Ib.*

See LOCAL LAW (MISS.);
TRESPASS, 2.

SALES.

See CONDITIONAL SALE;
INDIANS.

SECRETARY OF COMMERCE AND LABOR.

See IMMIGRATION, 2.

SECRETARY OF THE INTERIOR.

See PUBLIC LANDS, 6, 7.

SERVICE OF PROCESS.

See CONSTITUTIONAL LAW, 13;
PRACTICE AND PROCEDURE, 4.

STARE DECISIS.

1. *Decisions as rule of property.*

Decisions of this court and of the local courts as to the date when a code of law making material changes in the prior existing law went into effect may well become a rule of property which should not be disturbed by subsequent conflicting decisions. *Nadal* v. *May*, 447.

2. *Effect of former decision as to merits of constitutional question alleged.*

It appearing from the records of this court that the constitutional questions alleged as the sole basis for a direct review of the judgment of the District Court, have been heretofore decided to be so wanting in merit as not to afford ground for jurisdiction, the appeal in this case is dismissed. *De Bearn* v. *Safe Deposit Co.*, 24.

STATES.

1. *Classification of claims; power as to; limitations upon.*

A State may classify claims against persons or corporations where there is no classification of debtors and where the claims are not grouped together for the purpose of bearing against any class of citizens or corporations. *Missouri, K. & T. Ry. Co.* v. *Cade*, 642.

2. *Classification of claims; power as to; attitude of Federal courts.*

A state police regulation designed to promote payment of small claims of certain classes and discourage unnecessary litigation respecting them should not be set aside by the Federal courts on the ground that claims of other kinds have not been included, where the legislature was presumably dealing with an actual mischief and made the act as broad in its scope as seemed necessary from the practical standpoint. *Ib.*

3. *Interference with powers of Federal Government; effect of pardon by President.*

A State may not directly or indirectly restrict the National Government in the exertion of its legitimate powers, nor can a State in any way punish a crime after the President of the United States has pardoned the offender. *Carlesi* v. *New York*, 51.

4. *Power to restrict or forbid manufacture of articles.*

A State may express and carry out its policy in restricting and for-

bidding the manufacture of articles either by police, or by revenue, legislation. (*Quong Wing* v. *Kirkendall*, 223 U. S. 59.) *Hammond Packing Co.* v. *Montana*, 331.

5. *Regulation of public callings; power to prescribe qualification of those engaged in.*

A State may prescribe qualifications and require an examination to test the fitness of any person to engage, or remain, in the public calling. *Smith* v. *Texas*, 630.

6. *Regulation of private occupations; limitations upon power.*

While the State may legislate in regard to the fitness of persons privately employed in a business in which public health and safety are concerned, the tests and prohibitions must be enacted with reference to such business, and not so as to unlawfully interfere with private business or impose unusual and unnecessary restrictions upon lawful occupations. (*Lawton* v. *Steele*, 152 U. S. 133.) *Ib.*

7. *Regulation of private occupations; limitations upon.*

Arbitrary tests by which competent persons are excluded from lawful employment must be avoided in state regulations of employment in private business affecting public health and safety. (*Smith* v. *Alabama*, 124 U. S. 465.) *Ib.*

8. *Regulation of private occupations; limitations on power.*

A State cannot, in permitting certain competent persons to accept a specified private employment, lay down a test which absolutely prohibits other competent persons from entering that employment. *Ib.*

9. *Reversion to; payment as condition precedent.*

In this case, *held*, that as reversion of property to the State was contingent on compensation, the statute should be construed as making payment a condition precedent of the reversion, as it could not be intended to remit the owner to a mere claim against the State which could not be enforced as the sovereignty of the State would give immunity from suit. *Carondelet Canal & Nav. Co.* v. *Louisiana*, 362.

See ACTIONS, 3, 4;
ATTACHMENT AND GARNISHMENT, 2;
CONSTITUTIONAL LAW, 1, 2, 11, 15, 18, 21, 22, 25, 35;
CRIMINAL LAW, 2;
GRANTS, 3;
INTERSTATE COMMERCE, 1, 5, 8, 17, 22, 23, 24, 28, 29;
RAILROADS, 1, 10;
TAXES AND TAXATION, 1.

STATUTES.

A. CONSTRUCTION OF.

1. *Legislative intent; effect of subsequent enactments to indicate.*

The intent of Congress in regard to its enactments—such as those relating to restrictions on alienation of Indian allotted lands—may be indicated by subsequent enactments relating to the same subject-matter. *Bowling* v. *United States*, 528.

2. *Motives for legislation; consideration unnecessary.*

When the purpose of Congress is stated in such plain terms that there is no uncertainty, and no construction is required, it is unnecessary to inquire into the motives which induced the legislation. The only province of the courts in such a case is to enforce the statute in accordance with its terms. *Texas Portland Cement Co.* v. *McCord*, 157.

3. *Administrative construction; weight to be given.*

In construing a statute, the practical interpretation given to it by the administrative body charged with its enforcement is entitled to weight. *Boston & Maine R. R.* v. *Hooker*, 97.

4. *Departmental construction; weight of.*

The practical interpretation of an ambiguous or uncertain statute by the Executive Department charged with its administration is entitled to the highest respect; and, if acted upon for a number of years, will not be disturbed except for very cogent reasons. *Logan* v. *Davis*, 613.

5. *Contemporaneous publication in two languages; weight of versions.*

In construing a statute which at the time of its enactment was published in more than one language, the version in the other language is significant. *Carondelet Canal & Nav. Co.* v. *Louisiana*, 362.

6. *Remedial statutes to be construed liberally.*

A remedial statute is to be construed liberally so as to effectuate the purpose of the legislative body enacting it; and so *held* as to the Adjustment Act of 1887. (*United States* v. *Southern Pacific Railroad Co.*, 184 U. S. 49.) *Logan* v. *Davis*, 613.

7. *Constitutional provisions; nature of; significance to be gathered, how.*

Provisions of the Constitution of the United States are not mathematical formulas having their essence in their form, but are organic living institutions transplanted from English soil. Their signif-

icance is not to be gathered simply from the words and a dictionary but by considering their origin and the line of their growth. *Gompers* v. *United States*, 604.

8. *Appropriations; special and temporary; effect to express intent as to future appropriations.*

A provision making a special and temporary appropriation will not be construed as expressing the intent of Congress to have a general and permanent application to all future appropriations. (*Minis* v. *United States*, 15 Pet. 423.) *United States* v. *Vulte*, 509.

9. *Provisos.*

A proviso in a statute will not be so construed as to have little or nothing to act upon and to have no reason for its insertion. *Thaddeus Davids Co.* v. *Davids Mfg. Co.*, 461.

10. *Repeals; effect on statute fixing salary of public officer of subsequent appropriations of a less amount.*

A statute which fixes the annual salary of a public officer at a designated sum without limitation as to time is not abrogated or suspended by subsequent enactments which merely appropriate a less amount for that officer for particular years and which contain no words expressly, or by clear implication, modifying or repealing the previous law. (*United States* v. *Langston*, 118 U. S. 389.) *United States* v. *Vulte*, 509.

11. *Effect on constitutionality of state court's construction as to application of state statute.*

A statute is not necessarily void for all purposes because it has been declared by this court to be unconstitutional as applied to a particular state of facts; it may be sustained as to another state of facts where the state court has expressly decided that it should not be construed as applicable to such conditions as would render it unconstitutional if applied thereto. *Kansas City Southern Ry. Co.* v. *Anderson*, 325.

12. *Limitations as part of right conferred.*

Limitations specified in the statute creating a new liability are a part of the right conferred and compliance therewith is essential to the assertion of the right conferred by the statute. *Texas Portland Cement Co.* v. *McCord*, 157.

See GRANTS, 1;
PRACTICE AND PROCEDURE, 5, 8–16, 19.

B. STATUTES OF THE UNITED STATES.
See ACTS OF CONGRESS.

C. STATUTES OF THE STATES AND TERRITORIES.
See LOCAL LAW.

TAXES AND TAXATION.

1. *Constitutionality of state statute; presumption as to intention of legislature.*

In determining whether a state tax statute is constitutional, there is a presumption that the legislature intended to tax only that which it had the constitutional power to tax, and the statute will be sustained if full and fair effect can be given to its provisions as confined wholly to intrastate business. *Singer Sewing Machine Co.* v. *Brickell*, 304.

2. *License tax; who within scope of Alabama law imposing license on vendors of sewing machines.*

The court below rightly held that a foreign corporation having an agency in each county of the State and selling sewing machines by traveling salesmen as well as at the agencies was subject to the license intended to be imposed on itinerant sales by the statute of Alabama, and that it fell without the excepted class of merchants although the latter made deliveries of machines by wagon. *Ib.*

3. *Estoppel by payment of tax.*

In this case *held* that payments of taxes made under an attempted compromise agreement did not operate to estop the taxpayer from contesting the legality of the action of the taxing authorities in increasing the assessments on the property. *Arizona* v. *Copper Queen Mining Co.*, 87.

4. *Separate assessment of mining claims theretofore assessed en masse; law of Arizona.*

In this case this court affirms the judgment of the Supreme Court of the Territory of Arizona that the Board of Equalization had no power under the statute of the Territory to raise the separate assessed valuation of certain mining claims of groups which had originally been assessed *en masse*. *Ib.*

See CONSTITUTIONAL LAW, 14, 17, 21;
INTERSTATE COMMERCE, 1, 2, 22.

TITLE.

To chattel incorporated in structure; when lost.

An owner of a chattel may lose title thereto without his consent by

its incorporation into a structure in such manner that its removal would destroy the structure. *Detroit Steel Cooperage Co. v. Sistersville Brewing Co.*, 712.

See INDIANS, 5;
PUBLIC LANDS, 10;
RIPARIAN RIGHTS, 1.

TRADE-MARKS.

1. *What appropriable as; surnames.*

A trade-mark consisting of an ordinary surname is not the subject of exclusive appropriation as a common-law trade-mark, but may, under the fourth proviso of § 5 of the Trade-Mark Act of 1905, be validly registered if in use for ten years next preceding the passage of that act in the manner specified therein. *Thaddeus Davids Co.* v. *Davids Mfg. Co.*, 461.

2. *Personal and geographical names; effect of fourth proviso of § 5 of act of 1905.*

The fourth proviso of § 5 of the Trade-Mark Act of 1905 modifies the general limitations contained in the second proviso of the same section against the use of personal and geographical names and terms descriptive of character and quality. *Ib.*

3. *Proper names; registration; infringement.*

While a trade-mark consisting of a proper name may be registered under the fourth proviso of § 5 of the Trade-Mark Act of 1905, another who uses that name will not be regarded as infringing the trade-mark unless the name is so reproduced, copied or imitated as to mislead the public with respect to the origin or ownership of the goods. *Ib.*

4. *Infringement of proper-name trade-mark; jurisdiction of Federal courts.*

Improperly using a proper-name trade-mark registered under the fourth proviso of § 5 of the Trade-Mark Act of 1905 in such manner as to mislead the public and thereby constitute infringement is not merely unfair competition at common law, which would not give the Federal court jurisdiction unless diverse citizenship existed, but is a violation of a Federal right and a Federal court has jurisdiction of an action based thereon. *Ib.*

5. *Infringement; sufficiency of showing as to intent.*

While in a case for unfair competition it may be necessary to show intent to deceive the public, in a case for violation of a properly

registered trade-mark it is not necessary to show wrongful intent or facts justifying an inference of such intent. *Ib.*

6. *Infringement of proper-name trade-mark; when name properly registered.*

Complainant having, for the period and in the manner specified in the proviso of § 5 of the Trade-Mark Act of 1905, used the name "Davids'" in connection with ink manufactured and sold by it in a particular manner, that name was properly registered as a trade-mark and the defendants by using the same word in such a similar style on the ink manufactured by them as to mislead the public infringed complainant's rights under the statute and should be enjoined. *Ib.*

7. *Rights conferred by § 5 of act of 1905.*

In enacting the Trade-Mark Act of 1905 and inserting the provisos in § 5 thereof, Congress did not intend to provide for a barren notice of an ineffectual claim, but to confer definite rights, and an applicant properly registering under the act becomes the owner of the trade-mark and entitled to be protected in its use as such. *Ib.*

TRANSFER TAX.

See CONSTITUTIONAL LAW, 17.

TRANSITORY ACTIONS.

See ACTIONS, 5.

TRESPASS.

1. *What constitutes; dredging gravel from bed of stream as; remedy of owner.*

To constantly dredge gravel from the bed of a stream is a continuing trespass and wrong that entitles the owner to injunctive relief in equity and for which he has no adequate remedy at law. *Archer* v. *Greenville Sand & Gravel Co.*, 60.

2. *On bed of navigable stream; pleading in suit to prevent; presumption as to permit from Secretary of War.*

One sued for removing gravel from the bed of a navigable stream by the owner of the upland cannot demur on the ground that the complaint fails to show that he has not obtained a permit from the Secretary of War. It will not be presumed that the Secretary of War will authorize such removal, and the existence of such a permit must be pleaded. *Ib.*

3. *Equity jurisdiction to enjoin; timeliness of invocation.*
Equity has jurisdiction of an action to enjoin a continuing trespass even if the injunctive remedy is only asked after final adjudication and although the trespass may have been discontinued before that time. *Ib.*

4. *Equity jurisdiction to enjoin; timeliness of invocation.*
There is no loss of rights or remedies because a plaintiff does not ask for immediate relief but endures the wrong pending the litigation and until final adjudication. *Ib.*

TRIAL.

See APPEAL AND ERROR, 1;
PRACTICE AND PROCEDURE, 30.

UNFAIR COMPETITION.

See TRADE-MARKS, 4, 5.

UNITED STATES.

Authority; impairment of; consent to; necessity for.
The authority of the United States to enforce a restraint lawfully created by it cannot be impaired by any action without its consent. *Bowling* v. *United States*, 528.

See ACTIONS, 6; INDIANS, 6, 7, 9, 11;
CONTRACTS, 8; PUBLIC LANDS, 18.

VENDOR AND VENDEE.

See CONDITIONAL SALE.

VENUE.

See ACTIONS, 3, 4, 5;
CONSTITUTIONAL LAW, 32.

VERDICT.

See APPEAL AND ERROR, 1.

VESSELS.

See ADMIRALTY;
NAVIGABLE WATERS.

WAGES OF EMPLOYES.

See CONSTITUTIONAL LAW, 18;
GOVERNMENTAL POWERS, 2;
INTERSTATE COMMERCE, 21, 27.

WAIVER.

See PUBLIC LANDS, 1.

WATER RIGHTS.

See LOCAL LAW (CAL.);
RIPARIAN RIGHTS.

WORDS AND PHRASES.

"It may revert to the State" as used in statute of Louisiana.

The provision in the act of 1858 of Louisiana, granting rights to a corporation on certain conditions, that after fifty years "it may revert to the State," *held* to relate to the company and not to one of the properties specified. *Carondelet Canal & Nav. Co.* v. *Louisiana*, 362.

"Penalty" (see Penalties and Forfeitures, 1). *O'Sullivan* v. *Felix*, 318.

Relative pronouns; relation.

The natural and grammatical use of a relative pronoun is to put it in close relation with its antecedent, and in this case so *held* as to the pronoun "it," notwithstanding its use rendered the sentence somewhat ambiguous. *Carondelet Canal & Nav. Co.* v. *Louisiana*, 362.

WRIT AND PROCESS.

See APPEAL AND ERROR, 3; CONSTITUTIONAL LAW, 13;
ATTACHMENT AND GARNISHMENT; PRACTICE AND PROCEDURE, 4.